Organization of European Waterways of International Concern

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European Waterways

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OFFICE OF STRATEGIC SERVICES
Research and Analysis Branch

R & A No. 2476

ORGANIZATION OF EUROPEAN WATERWAYS OF INTERNATIONAL CONCERN

Description

A statement of the topography of European waterways of international concern, an analysis of the history and functioning of the regimes and organizations established on these waterways, and a discussion of the pertinent problems which may arise after the cessation of hostilities.

29 March 1945

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SUMMARY

The Rhine and Schelde in northwestern Europe, the Danube in southeastern Europe, and the Elbe, the Oder, the Vistula and the Niemen (Memel) in central Europe are river systems that have been considered of international concern. Each of these systems serves the traffic of more than one country. The need for preserving free navigation and for solving other common problems has resulted in international agreements on rules and regulations and oh the establishment of machinery for dealing with these issues. River commissions, and similar organizations which, with varying powers, were created first for the Rhine and later for the other waterways, have functioned more or less successfully in accordance with the changing political situation.

The need for an effective international organization for waterways of international concern will persist, and the past experience of such organizations should be used to strengthen their efficiency. Works completed or initiated and pending projects for connecting various river systems, as well as the growing number and size of technical developments -- particularly those for electric power production -- make it desirable to extend the powers vested in the international organization, and to coordinate the different phases of work for individual waterway systems. The methods adopted for this purpose will depend on the general schemes that may be developed for the overall organization of transport and for international security in Europe.

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N O T E

Department of State maps No. 1675 G and 1676 G, which are not yet printed, will be distributed to recipients of this report when copies are received from reproduction.

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I. GENERAL CONSIDERATIONS

A. Introduction

European waterways have been important channels of communication for centuries. In modern times, water transportation particularly of bulk commodities has steadily grown in importance. The strain on transportation facilities and equipment during the present war has given even greater impetus to the use of this mode of conveyance.

Each main waterway in northwestern, central and southeastern Europe crosses more than one State. Most of them serve several countries. The problems that have arisen in connection with the common use of these waterways could be solved only by concerted action of interested States, and a system of rules and regulations, as well as international machinery, has been established for this purpose.

This study deals with the history of international action, the methods employed in the past, and possible future developments.[1] The following European waterway systems have been considered of international concern: the Rhine and Schelde, the Danube, the Elbe, the Oder, the Vistula, and the Niemen (See Department of State maps No. 1675 G and 1676 G.)[2]

B. Topography of the Waterways of International Concern

1. Rhine and Schelde. The Rhine is the most important artery of water traffic in northwestern and central Europe. Extending some 850 miles, it forms the boundary between

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1. The sources are given in the bibliography. In addition, detailed use has been made in the preparation of the report of the knowledge and experience of a former member of the Central Commission for the Rhine.

2. In writing Section I use was made of maps No. 1675 G and 1676 G on Navigable Inland Waterways of Europe which were compiled by the Dept. of State with the cooperation of OSS.

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Switzerland and Austria, between Switzerland and Germany, between France and Germany, and then flows through Germany and the Netherlands to the North Sea (Map No. A-3024).

At Reichenau in Switzerland two mountain streams join to form the Rhine. From Reichenau the river flows northward into the Bodon-See, a natural storage reservoir, which reduces the great variation in the volume of flow below its outlet. Hydroelectric engineers view with favor further regulation of the flow by means of a dam. From the lake the Rhine flows westward as far as Basel. Halfway between Konstanz and Basel, the Aar, which drains northwestern Switzerland, joins the Rhine. Both rivers have about the same average volume of flow. Plans for the development of the Basel-Konstanz sector provide for a series of dams and hydroelectric plants, several of which are in operation. The plans further provide for locks to be built in when all the dams have been completed. These installations will make the Rhine a navigable waterway as far as Bregenz in Austria. Also, in time, the lower Aar probably will become accessible to modern navigation.

Between Basel and Mainz the Rhine flows in the level rift valley some 20 miles wide. Before being corrected in the 19th century, it meandered as a wide stream with low banks and contained many islands. Two canals, the Rhine-Marne and the Rhine-Rhone (the latter connected with the Rhine both at Strasbourg and near Basel), which are accessible only to barges of 300 tons, carry a considerable amount of traffic. A dam, power plant, and lateral canal, with locks capable of accommodating the largest Rhine vessels, were built at Kembs, a few miles below Basel on the Alsatian side of the river, to overcome an obstacle which

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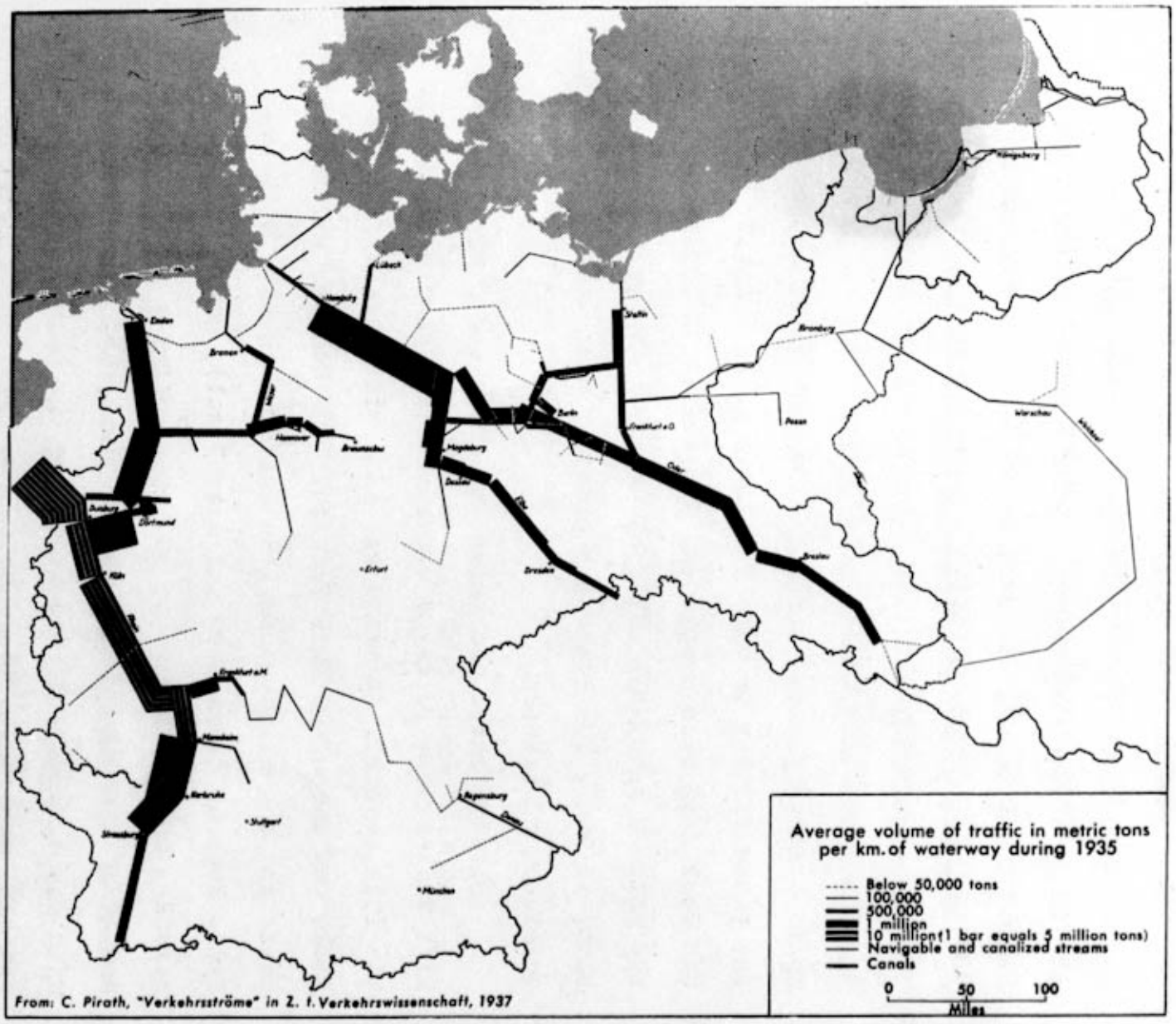

TRAFFIC FLOW ON THE INLAND WATERWAYS OF GERMANY IN 1935

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formed there as a result of the correction carried out in the 19th century. Later the Rhine was regularized up to Strasbourg, the work being virtually completed before the last war, and later still, between Strasbourg and Kembs. The Rhine is now navigable as far as Basel, a port which developed a considerable traffic a few years before the present war. Large Rhine barges of 2,000 tons and small, specially constructed seagoing vessels can reach Basel. The minimum draft maintained during a large part of the year is two meters (6 feet 8 inches). North of Lauterbourg, southwest of Karlsruhe, the Rhine, which to that point forms the boundary between Germany and France, flows within German territory, passing Ludwigshafen and Mannheim, where it is joined by the Neckar on the right, then Worms and Mainz, where the Main tributary also enters it on the right. The Neckar and the Main have been canalized, the former as far as Stuttgart and the latter as far as Würzburg. It is planned to extend this modern waterway to Bamberg, and to connect the Main with the Danube above Regensburg.

At Mainz the Rhine turns to the west and northwest and cuts across the Middle Rhine Highlands in the Rhine Gorge between Bingen and Bonn. The Bingerloch, which marks the beginning of the gorge, used to be a serious obstacle to navigation, but two navigable channels exist there now. However, as visibility is limited by sharp curves in this stretch and through the gorge, navigation requires a good deal of skill. At Koblenz the Rhine is joined on its left bank by the Moselle (Mosel), which rises in the Vosges. The Moselle, with the Saar and other tributaries, drains the region between Vosges and the Ardennes. The Moselle, south of the French border, is navigable only in short stretches

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but its upper reaches and the Saar in France are integrated into the French canal system by several canals, especially the Rhine-Marne Canal, which joins the Rhine at Strasbourg. Also, from Koblenz east to Giessen the canalized Lahn River is navigable for barges of less than 400 tons.

At Bonn the Rhine leaves the Middle Rhine Highlands, but hills rise on the right bank of the river as far as Düsseldorf. Between Cologne, normally the terminus of maritime navigation by specially constructed vessels, and the Netherlands border the Rhine meanders over an almost level plain through the great industrial region of western Germany. In this stretch the minimum normal depth of the river is 9.8 feet. The Ruhr River joins the Rhine below Duisburg and the Lippe River joins it just above Wesel. The Ruhr serves only as access to the port of Mülheim. Between the Ruhr and Lippe rivers three canals, the Rhine-Herne Canal, the Emscher Canal and the Lippe-Seiten Canal (Wesel-Datteln), enter the Rhine, serve the Ruhr industrial region, and via the Dortmund-Ems and the Midland (Mittelland) canals connect this region with northern and central Germany.

West of the German-Netherlands border the Rhine and connecting waterways provide an intricate system of navigable channels. A few miles west of the border the Rhine divides into two rivers. On the south the Waal carries about two-thirds of the volume. On the north the Neder Rijn (Lower Rhine), which becomes the Lek farther west, flows roughly parallel to the Waal. Above Arnhem the Ijssel River branches off the Neder Rijn and flows into what was known as the Zuider Zee, now called Ijsselmeer.

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From near the German boundary the Meuse (Maas) flows west across the Netherlands roughly parallel to the Waal and joins it in Hollandsch Diep. The Meuse rises in the department of Haute Marne, France and with its main affluent, the Sambre, forms the eastern part of the Franco-Belgian waterway network. Liége on the Meuse is connected with the port of Antwerp by the recently built Albert Canal, which accommodates the same type of craft as the Rhine between Basel and Cologne. The Meuse forms the boundary between Belgium and the Netherlands, dividing the Belgian province of Limburg from the Dutch province of the same name, except for a short distance near Maastricht where both banks are Dutch. From Maastricht, smaller canals of less recent construction connect the Meuse with the northeastern part of Belgium and the southeastern part of the Netherlands. On the right bank the Juliana Canal, accommodating the same type of craft as the Albert Canal, serves as substitute for the river as far as Roermond. This canal and the river itself below Roermond connect Liége and Maastricht with Rotterdam and other ports of the Netherlands. There are three connections between the Meuse and the Waal, the Meuse-Waal Canal just west of the German boundary, one southeast of Gorinchem, and the other about halfway between these two.

West of Gorinchem, the Waal becomes the Merwede and divides. The southern branch, the Nieuwe Merwede, enters the Hollandsch Diep, which divides into three channels, the southernmost of which connects the Waal-Rhine with the Oester Schelde (East Schelde). The northern branch of the Merwede flows through Dordrecht. This is the main fairway, as the Hollandsch Diep is rendered inaccessible to all but the smallest craft by two bridges. At Dordrecht the Merwede

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divides into two fairways: (1) the Noord, a narrow artificially enlarged channel which joins the Lek at Krimpen and forms the Nieuwe Maas that leads to Rotterdam, and (2) the Dortsche Kil, which joins the Hollandsch Diep below the bridges and forms the beginning of the fairway to the ports of the Scheldt. Rotterdam, the main maritime port of the Rhine waterway system, is connected with the sea by an artificial channel, the Nieuwe Waterweg. North from Gorinchem the Merwede Canal connects the Waal and the Lek with Amsterdam, one of the three main maritime ports of the Rhine waterway system. (A more easterly and shorter connection is planned.) Amsterdam has access to the sea by means of the Noordzee Kanaal (North Sea Canal), which has one of the largest locks of the world. The route followed by Rhine navigation between the Hollandsch Diep and Belgium is a canal across the island of Zuid Beveland, which enables traffic to pass from Oester Schelde into Wester Schelde, to Antwerp, another of the three main maritime ports of the Rhine waterway system, to Ghent (via the canal from Terneuzen to Ghent), and to Brussels (through its maritime canal). Most important places in the Netherlands and northern Belgium are served by the Rhine waterway system. Northern France is also served by it through the Scheldt, the Meuse, and connecting canals.

From early times the Rhine has been one of the chief waterways of Europe. Its position has favored the development of traffic. It flows through highly industrialized regions rich in mineral resources and into greatly frequented seas. It serves as an outlet for Switzerland, France, Germany, Belgium, and the Netherlands. Traffic on it is little interrupted by flood, drought, or ice. The main

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characteristic of Rhine traffic in comparison with that of other waterways is its diversity. (See Map No. 6308).

Among the main ports of the Rhine waterway system are Basel, Strasbourg-Kehl, Karlsruhe, Mannheim-Ludwigshafen, Mainz, Frankfurt a.M., Cologne, Neuss, Düsseldorf, the Rhine-Ruhr ports (Duisburg, Ruhrort, etc.), the ports of the Rhine-Herne Canal, Rotterdam and its satellites, Amsterdam, Antwerp, Ghent, Brussels, Liége, and Maastricht.

At the Dutch-German frontier, the respective shares of the various flags in the movement of vessels was in 1936 approximately as follows: Netherlands', 60 percent; German, 18 percent; Belgian, 16 percent; French, 3 percent; Swiss, 2.5 percent; the share of other flags in the traffic was insignificant. Above Duisburg, the share of the German flag was considerably higher.(Dept.of State, Rhine Ser. Map 2).

The Schelde rises in France near St. Quentin on the south side of the ridge of Artois-Cambrésis. It is connected by canal with the Oise, and thus forms part of the link between the waterway system of the Seine and that of the Rhine. It is the main artery in the western part of the Franco-Belgian waterway network. At Ghent, the Schelde is joined by the Lys, which is also part of that same network. Ghent has access to the sea through a canal to Terneuzen. Between Ghent and Antwerp the Schelde is joined by its other important tributaries, the Dendre and the Rupel. The Rupel is part of the maritime and fluvial access to Brussels. At Antwerp, maritime traffic, Rhine traffic, and the traffic of the Belgian and French waterways converge. The Wester Schelde, the maritime approach to Antwerp, is connected with the North Sea by means of three passages: the Wielingen Channel on the south, the Deurloo Channel in

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the center, and the Oost Gat Channel on the north.

2. Danube. With the exception of the Volga, the Danube is the longest navigable waterway in Europe. It has a total length of 2,850 kilometers (1,750 miles). It rises on the eastern slopes of the Black Forest (Schwarzwald) and flows through Württemberg, past the city of Ulm, then through Bavaria where among other tributaries it receives the Lech, the Altmühl and the Isar. The Altmühl, which flows into the Danube at Kelheim, a few miles above Regensburg, will be canalized as part of the Rhine-Danube junction. At Passau, on the German-Austrian border the Danube receives the Inn, which flows through eastern Switzerland, the Tirol and southwestern Bavaria and which, although considered as not normally navigable, has a greater volume than the upper Danube. From Passau to Linz the Danube is hemmed in by mountains, but as the valley becomes wider below Linz, the river subdivides into several arms which reunite at the famous whirlpool near Grein. The river flows through another narrow defile as far as Krems. Below this town the Danube flows eastward, and again bifurcates as it approaches Vienna. Below Vienna, it flows between the eastern Alps and the Carpathians.

Here the river enters Czechoslovakia, its navigable tributary, the Morava (March), forming the boundary. For a few miles the Danube is entirely within Czechoslovakia where it passes the port of Bratislava. From below Bratislava to Esztergom (Gran) it forms the boundary between Czechoslovakia and Hungary. Thence the valley narrows to Waitzen (Vac), where the river turns sharply to the south and enters the great Hungarian plain.

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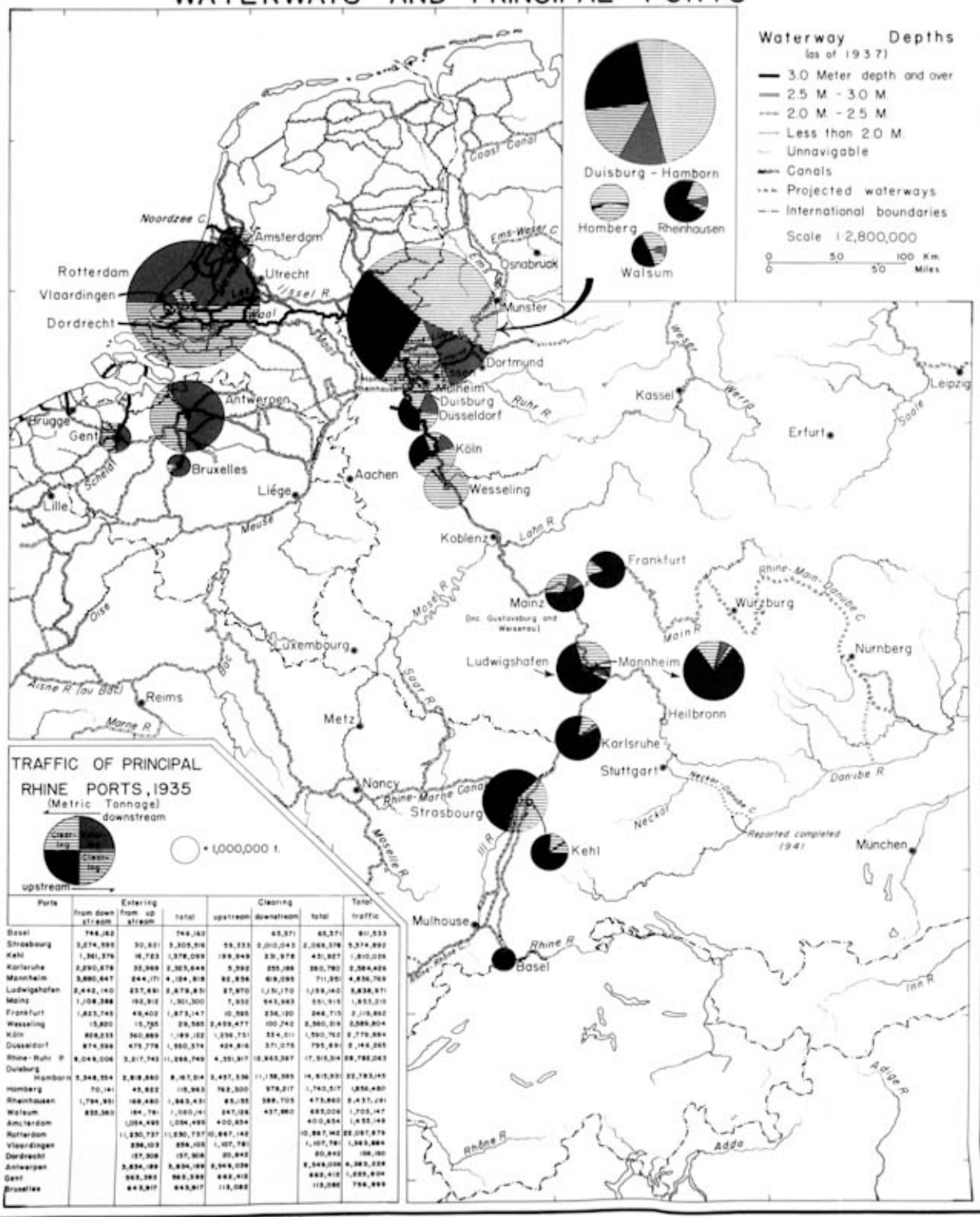
RHINE RIVER SYSTEM
WATERWAYS AND PRINCIPAL PORTS



Ports	Entering from down stream	Entering from up stream	Entering total	Clearing upstream	Clearing downstream	Clearing total	Total traffic
Basel	748,262		748,262		65,371	65,371	811,633
Strasbourg	3,274,595	30,921	3,305,516	59,333	2,010,043	2,069,376	5,374,892
Kehl	1,361,376	16,723	1,378,099	189,949	231,978	421,927	1,800,026
Karlsruhe	2,290,878	32,968	2,323,846	5,592	255,188	260,780	2,584,626
Mannheim	3,880,647	244,171	4,124,818	82,856	628,095	711,951	4,836,769
Ludwigshafen	2,442,140	237,691	2,679,831	27,970	1,131,170	1,159,140	3,838,971
Mainz	1,108,388	192,912	1,301,300	7,552	543,363	551,915	1,853,215
Frankfurt	1,823,745	49,402	1,873,147	10,395	236,120	246,715	2,119,862
Wesseling	15,820	15,735	29,585	2,459,477	100,742	2,560,219	2,589,804
Köln	808,233	360,889	1,169,122	1,256,751	334,011	1,590,762	2,779,884
Düsseldorf	874,598	473,778	1,350,376	424,816	371,075	795,891	2,146,265
Rhine-Ruhr P.	8,048,006	3,217,743	11,266,749	4,351,917	12,963,387	17,315,304	28,782,053
Duisburg Hamborn	3,348,554	2,818,660	6,167,214	3,457,536	11,138,585	14,615,951	22,783,165
Homberg	70,141	45,822	115,963	762,300	978,217	1,740,517	1,856,480
Rheinhausen	1,794,951	168,480	1,963,431	85,155	388,705	473,860	2,437,291
Walsum	835,360	184,781	1,020,141	247,126	437,880	685,006	1,705,147
Amsterdam		1,054,495	1,054,495	400,654		400,654	1,455,149
Rotterdam		11,230,737	11,230,737	10,867,142		10,867,142	22,097,879
Vlaardingen		856,103	856,103	1,107,781		1,107,781	1,963,884
Dordrecht		157,908	157,908	80,842		80,842	238,750
Antwerpen		3,854,189	3,854,189	2,949,039		2,949,039	6,803,228
Gent		963,593	963,593	662,412		662,412	1,626,004
Bruxelles		64,917	64,917	113,082		113,082	178,999

Compiled and drawn in Ge., Jan. 13, 1943

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A large part of the Hungarian plain is flat and low, the altitude rarely exceeding 300 feet. Natural drainage by the Tisa and the Danube is poor; where no artificial drainage has been done, the banks of the rivers are in many places lined by wide swamps and marshes, which in winter become large ice fields. In the long stretch between Budapest and Belgrade the Danube meanders in a wide, alluvial valley and requires constant dredging or regularization for uninterrupted navigation.

The Danube crosses the border of Hungary and Yugoslavia below Baja; after passing Vukovar, it is diverted sharply eastward until it reaches Belgrade. Between the Hungarian border and Pančevo, a few miles below Belgrade, the Danube receives several of its most important affluents: first, on the right bank, the Drava, which is theoretically navigable up to Barcs and which in places forms the boundary between Hungary and Yugoslavia; second, on the left bank, the Tisa, navigable to its confluent with the Szamos (Somesul). Among the navigable affluents of the Tisa are the Maros, navigable to Arad, and the canalized Bega, navigable to Timisoara. At Belgrade the Danube receives, on the right bank, the Sava, which is navigable beyond Sisak. The lower sector of the Sava forms the main port of Belgrade. Near Pančevo, the Danube receives the Temes which is unimportant for navigation beyond that city. Although two canals, the King Peter and the King Alexander, connect the lower Tisa with the Danube, they are inadequate in terms of modern requirements.(See Map No. A-3025).

At Bazias the character of the Danube valley suddenly changes. Between Bazias and Turnu Severin the river has

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worn a channel through the mountain ridge that joins the Carpathian arc and the Balkan mountains. Here the Danube is hemmed in by precipitous rocks of the Iron Gates (162 yards wide). However, it widens out to nearly a mile at Orsova. In this stretch the river has been cleared of numerous obstructions to navigation.

East of the Iron Gates, the Danube receives many tributaries as far as Cernavoda, where it is diverted northward by the hills of the Dobrogea. Between Cernavoda and Brăila the river divides into several channels, spreads out over the adjacent country, and forms many lakes. A few miles above Galati the navigable Siret and a few miles below Galati the navigable Prut flow into the Danube. From Galati, the chief port on the delta of the Danube, the river flows eastward toward its mouth. For 30 miles below Galati the Danube flows as a single channel, then it breaks up into the three main branches -- the Kilia, Sulina and St. George. The Kilia Branch discharges 67 percent of the Danubian outflow, whereas the Sulina and St. George branches discharge 9 and 24 percent, respectively. The Danube brings down such great quantities of sediment that the channels of the delta are constantly silting up. Since silting is less in the Sulina branch than in others, it is the principal channel of navigation. However, constant dredging is required for maintenance of a depth sufficient for vessels with a draft of 24 feet. Vessels up to 4,000 metric-ton registry can ascend the river as far as Brăila, but those up to 600 tons can sail as far as Turnu Severin.

On the Danube navigability in general is by no means as satisfactory as it is on the Rhine. Construction of the Vilshofen Dam and Locks (near Passau) has made it possible

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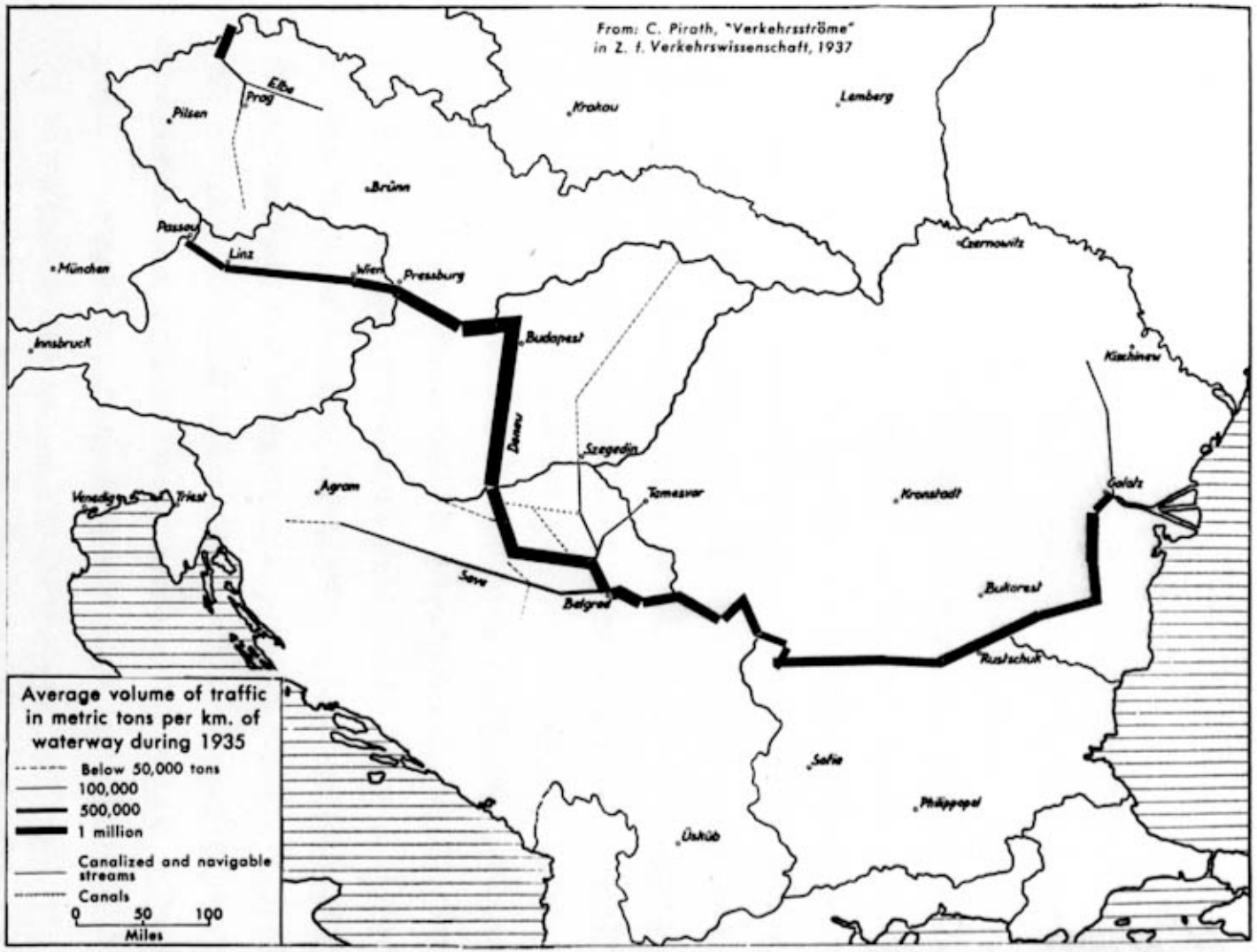

TRAFFIC FLOW ON THE INLAND WATERWAYS OF THE DANUBE REGION IN 1935

NO. A-3025-RA, OSS
10 FEBRUARY 1944

LITHOGRAPHED IN THE REPRODUCTION BRANCH, OSS

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for 1,000-ton barges to reach Regensburg, now considered the head of commercial navigation. However, plans have been prepared for making the river accessible to such navigation as far as Ulm. The Danube in Germany has a year-round channel depth of 6.56 feet. In the Austrian Danube the Greiner Strudel, a narrow channel interspersed with reefs, limits traffic to a one-way movement and prevents night travel. Below Bratislava the stream is broken up in a number of channels which are constantly changing in depth. The absence of a truly fixed channel and definite shore line prohibits night travel altogether, and in the season of low water makes pilotage necessary even during the day. The Iron Gates sector is the principal hazard and limiting factor in Danubian water transportation. Despite construction carried out to improve this stretch, navigation is still far from ideal. The current is dangerously swift, and during periods of low-water obstructions may hold up large barges and self-propelled craft for days. There are plans for a canal between Cernavoda and Constanta. Such a canal would enable inland navigation to reach a port accessible to large ocean-going vessels and would remove the seasonal and permanent traffic limitations resulting from the Sulina bar.

Depending on precipitation and thaw, there is considerable variation in flow during the year and in different stretches of the river. The key to the problem of providing adequate depth of water for navigation is control of the headwaters, but this involves many national interests in power development, forestry, and land utilization. There is here a potential source of hydroelectric power of great significance.

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The severe winters prevailing in the Danube Basin interrupt navigation for some 65 days on the average. Severity of winters, of course, varies, and interruptions up to 90 days are not uncommon. Drifting ice combined with fast flowing current is a serious danger to river craft. The inadequate number of shelters that offer protection during such periods is a definite deterrent to navigation.

The area served directly by the Danube system is effectively limited by poor connections between the producing areas lying within the basin and consuming areas, which for the most part lie beyond.

3. Elbe. The important central European river, the Elbe, rises in Bohemia on the southern side of Rieson Gebirge. Augmented by the Moldau (Vltava), which more than doubles the volume of the stream, the Elbe follows a deep, narrow, rocky gorge through the basaltic mass of the Mittel Gebirge. North of the Czechoslovakian frontier, the stream flows in a northwesterly direction to the North Sea. Northwest of Dresden the river in its course across the North German Plain, touches Wittenberg, Magdeburg, and Hamburg, and gathers the waters of several tributaries, among them the Saale and Havel, with its affluent, the Spree. Maritime and fluvial traffic meet in the port of Hamburg. With a width of 4 to 9 miles, the Elbe below Hamburg flows through the marshes of Hannover and Holstein to the North Sea off Cuxhaven. The river is navigable on 525 miles of its length, as far as Melnik. Only a short stretch in Czechoslovakia is navigable, but the extension formed by the Moldau permits navigation from Melnik to Budweis, (Ceske Budejovice) although traffic is unimportant above Prague. (See Map No. 3440).

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Considerable work has been done on the Elbe to increase its navigability. From this point of view the Elbe can be divided into three sections: (1) canalized, (2) regularized, and (3) maritime. The canalized section includes the Moldau from Prague to Melnik, and the Elbe from Melnik to Lobositz. The completion of the Strekov Dam will extend canalization to Aussig (Ustí). This section, 115 miles long, has a navigable channel of a minimum depth of 6.9 feet, and can accommodate normally a barge of 900-ton capacity. The canalization is effected by locks and movable dams, the latter so designed that in time of flood or frost they can be dropped flat on the bottom of the river.

The regularized section stretches for some 400 miles between Aussig and Hamburg. The depth of the navigable channel varies, depending on general hydraulic conditions. Barges of 900-metric ton capacity can be fully loaded during an average of 220 days per year, and to three-quarters of capacity for about 80 days. The work of improvement has established a depth of 4.1 feet below and 3.6 feet above the Saale mouth at the lowest water level.

The maritime section between Hamburg-Harburg and the sea, some 93 miles long, has an average high-water depth of 39 feet. Considerable effort has been exerted to meet the constantly expanding draft of vessels. Ships of 36-foot draft can reach Hamburg at high water. Lübeck has direct communication with the Elbe by the Elbe-Trave Canal. The Midland Canal, the last part of which (Hannover-Magdeburg) has been recently completed, establishes passage between the Rhine and the Elbe systems, and through the Plauer Canal, to the middle Havel River. The Saale has

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recently been canalized to Merseburg, whence a short canal extends Elbe navigation to Leipzig.

The traffic on the Elbe is less than and not as diversified as that on the Rhine. (See Map No. A-3024).

4. Oder. The Oder River, an important artery for water-borne traffic in eastern Germany, rises in the Oder Gebirge of the Bohemian Massif. It is some 560 miles long. From the Czechoslovakian border above Ratibor it flows northwest and north across the recent deposits of the North German Lowlands in a wide valley and with low banks. In its lower course it frequently bifurcates, forming numerous islands. Its main channel passes Stettin into the Stettiner Haff formed by the Oder. Stettiner Haff is connected with the Baltic sea by the three branches, the Peene, Swine, and Dievenow. The Swine, the central branch, is the main channel for navigation (Map No. 5412).

For a short distance the Oder forms the frontier between Germany and Poland. It crosses the Upper Silesian coalfields and industrial region. Among its tributaries only the Warta (Warthe) with its affluent, the Netze, is of interestto navigation. The most important towns on its course are Ratibor, Oppeln, Brieg, Breslau, Glogau, Frankfurt-on-Oder, Küstrin, Stettin, and Swinemünde.

The Oder is navigable for barges up to Ratibor, where it is about 100 ft. wide, and for larger vessels up to Breslau. At Breslau constant dredging is necessary to keep the channel clear. Several parts of the main stream have been canalized, especially in the low-lying reaches in its upper courses, and between Stettin and the sea. It is now possible for sea-going vessels, drawing 24 feet of water, to reach Stettin. The lower Oder is connected by canal with

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the Havel River and Berlin. Navigation is possible on the Warta and on the Netze, which is connected by a canal through Bydgoszcz (Bromberg) with the Vistula. The middle Oder is also connected with Berlin via the Oder-Spree Canal. Completion of the Adolf Hitler Canal in December 1939, with its new terminal port facilities at Gleiwitz, has forged a closer link with the Upper Silesian coal fields. The new canal accommodates the largest Oder vessels.

Plans have been worked out for canalizing the Oder above Ratibor and connecting it by canals with the Upper Elbe at Pardubice and with the Morava, an affluent of the Danube near Prerau. (See Map No. 6332).

5. Vistula. The Vistula rises in the West Beskids in Polish Silesia and flows northward through a mountain valley to Oswiecim. The Vistula then flows in an easterly direction to Sandomierz, where it assumes a northerly course as it cuts a narrow channel through chalk deposits to Deblin. As it approaches Warsaw, the Vistula enters a broad valley. Just below Nowe (Neuenburg) the right bank and not the river itself forms the boundary between Poland and East Prussia. Just below Pieckel the Vistula divides into two branches. The main branch, which keeps the name Vistula, forms the boundary between the Free State of Danzig and Poland; and the lesser one, called the Nogat, forms the boundary between East Prussia and the Free State of Danzig. Below Tczew the territory of the Free State extends on both banks. The Vistula flows into the Gulf of Danzig.

The Vistula is navigable up to the mouth of the Brzemsza, but there is no regular traffic above Warsaw. However, its geographic location makes it a potential waterway of importance. Severe winters that keep it frozen for three months of the year and floods adversely affect its navigability.

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Before the first World War; regularization had been carried out on the then German part of the river -- some 140 miles in length. But these improvements were not very successful because Poland turned first to the more urgent tasks of unifying and improving her railways and roads.

The historical nucleus of Danzig is situated on a small affluent of the Vistula, the Motlau. The modern port of Danzig is on a dead arm of the Vistula itself. North of Danzig, Poland has built its new port of Gdynia.

6. Niemen. The Niemen rises in the swampy forests and marshes near Minsk in White Russia. It flows eastward past the city of Grodno, whence it proceeds northward. It contains many islands and passes over a number of rapids, some of which are hazards to navigation. In Lithuania, it flows westward into Kurisches Haff. At its confluence with the Sventa, it forms an angle of land on which the city of Kaunas (Kovno) is situated.

The Niemen is not very important for navigation but timber can be floated on almost all of its length, and this has some importance. The head of navigation is at Stolbzy southwest of Minsk. Although the Niemen flows northward on its way to the sea, the length of time it is free of ice increases as it approaches its mouth. On the average it is free of ice for 252 days of the year at Stolbzy, 255 days at Grodno, and 275 days at Kaunas (Map 2998).

The Niemen (known as the Russ in its lower course) forms the boundary between East Prussia and the territory of Memel, an autonomous port of Lithuania. The Treaty of Versailles applies to the "Russtrom-Memel-Niemen". The port of Memel is situated not on the river, but at the extreme northern end of Kurisches Haff where there is an outlet (See Tief) to the Baltic Sea.

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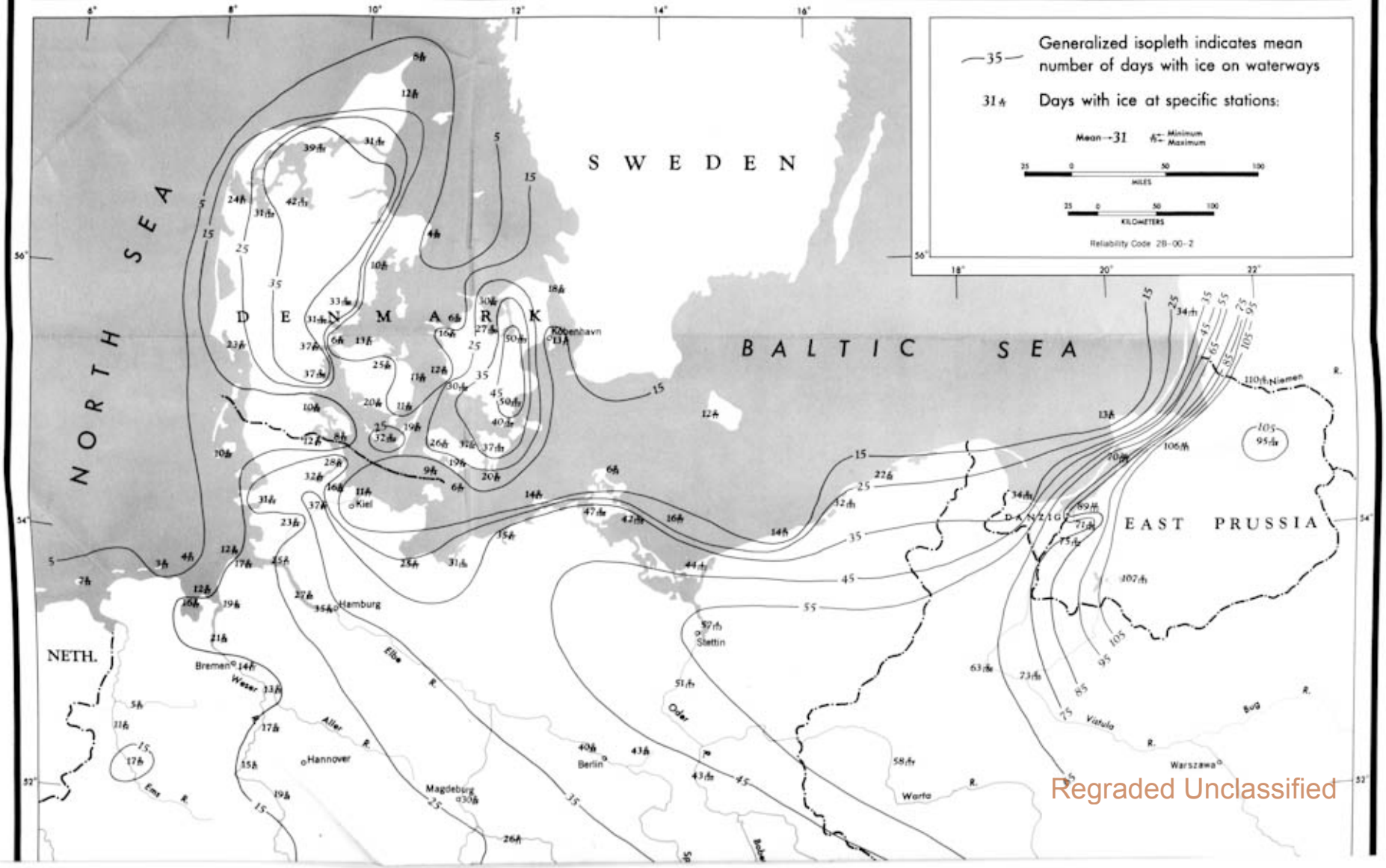
THIS OVERSIZE ITEM HAS BEEN
MICROFILMED IN SECTIONS.

PROVISIONAL EDITION

RESTRICTED

GERMANY AND DENMARK
NUMBER OF DAYS WITH ICE ON WATERWAYS



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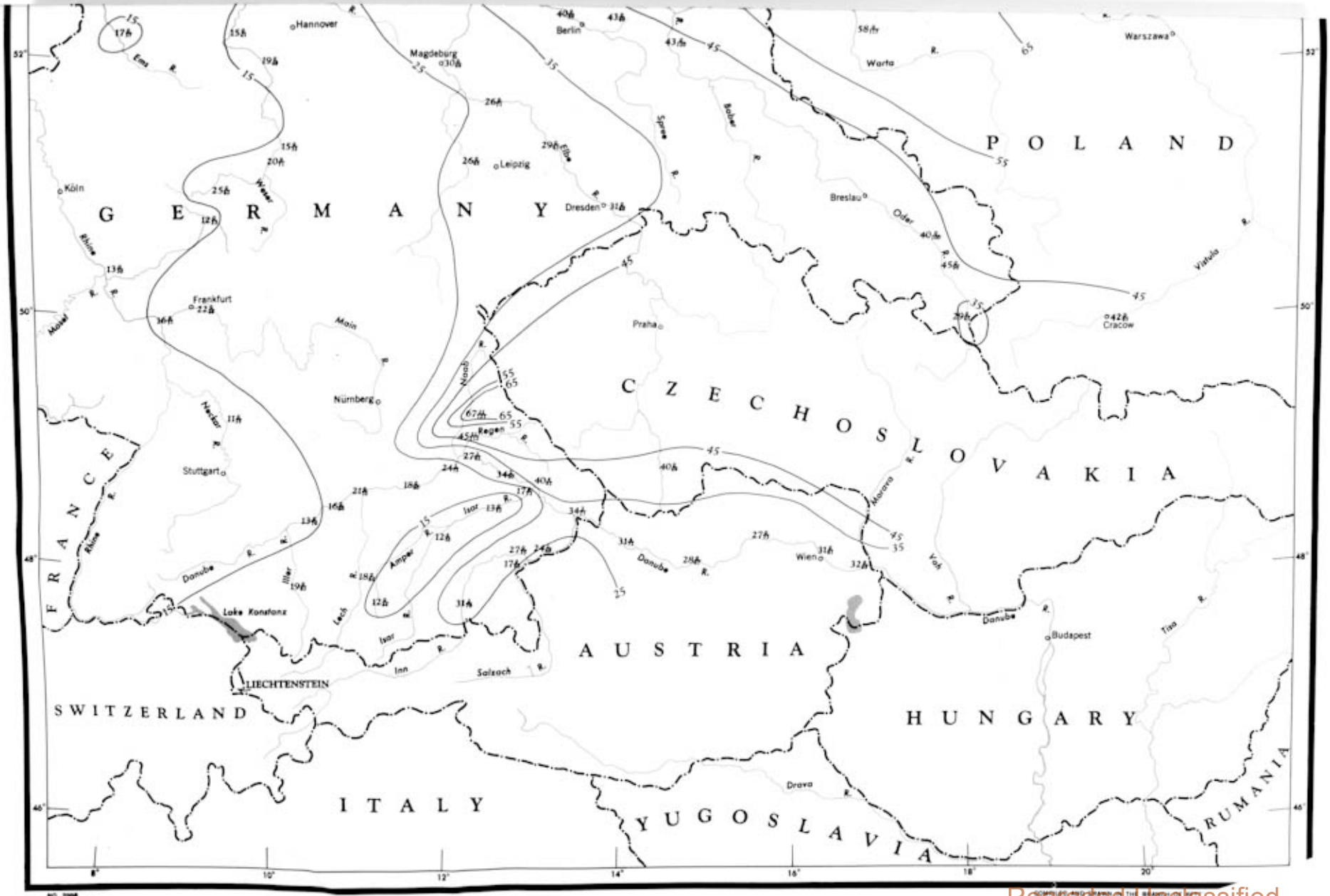

NO. 2998
28 MARCH 1944

Regraded Unclassified

II. EUROPEAN WATERWAYS TO 1919

A. Development of the Rhine System

1. Introduction. At the end of the 18th century, an antiquated economic system prevailed on the rivers of Europe. Forced harbor and port dues, break-bulk charges, staple rights, monopolistic guilds -- in short, complete local discretion -- were characteristic.

2. The Rhine under Napoleon

a. French Expansion to the Rhine, Hague Treaty of 1795. The French armies under Napoleon brought the liberal doctrines of the French revolution to the Rhine. The principle of free navigation on international rivers, as a part of the new doctrines, was officially announced for the Rhine by Art. 18 of the Treaty of the Hague, 1795. There was some further discussion of the Rhine question at the Congress of Radstadt, but the work here remained unfinished.

b. Convention on Rhine Tolls, 1804 (Convention Relatif de l'Octroi du Rhin)

i. Historical Background of the Central Commission for the Rhine. The plan for a central authority was first given legal expression in the Convention on Rhine Tolls, 1804, between France and the Reich (later, the Rhine Confederation), primarily as a means of regulating the collection and equal distribution of funds obtained from the new navigation dues. These dues were the solution to the problem of adequate compensation to German Princes who had lost their holdings on the left bank of the Rhine as a result of French victories. Secularization of church holdings did not provide enough land for complete territorial compensation, and a money payment to be obtained from river revenues was substituted where

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necessary. France insisted on [illegible] the river dues, replacing them with a fixed tax. The proceeds went first to administrative and police expenses, the remainder being divided equally between the two signatories. Germany's compensation funds came from her share of the revenue.

Central authorities representing both States were established: one with extensive power to regulate collection and equal distribution of the funds, and to settle all matters concerning the collection of dues. This establishment of joint central authorities[1] was of lasting influence on the organization of international rivers.

ii. Duties of the Central Authority. The central administrative authority had a strong position. Its inspectors had the power of strict supervision over the state of the river bed, navigation works, tow-paths, and over the collection of tolls. They had the right to receive complaints dealing with activities of the collectors, or with river police regulations. They were to report in detail on all these matters to the Director General. The Director General could then make all necessary rules according to the principles of the Convention, the rules to be effective immediately but subject to ratification by the two Powers.

iii. Other Articles of the Convention. Other Articles of the Convention of 1804 called for common navigation and police regulations, and free navigation rights for both signatories on the section of the river separating the two. Most of the arbitrary dues were

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1. Hereafter, the term "central authority" will be used to refer only to the organization dealing with general navigation matters.

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abolished, but Boatmen's Guilds at Mainz and Cologne retained their privileges, and staple rights under the new form of transshipment charges were therefore left to these two river ports, under the supervision of the French prefects. The new tolls were based on vessel tonnage or cargo weight, falling equally on all river traffic of the two countries. The number of collection points for these tolls was reduced to twelve, facilitating movement on the river. Customs duties remained at the discretion of the individual State, but customs authorities were precluded from acting on the river. In the case of war involving one or both parties, neutrality was promised for the central authority, its boats, and officials in the performance of their duties.

iv. Permanent Effects of the Convention. The Convention of 1804 represented a real limitation of national control. However, it included only two countries and applied to only one section of the river. The tributaries, the Dutch-controlled mouth, and the section above the boundary of the Swiss Confederation were not affected. A temporary working agreement with the Dutch Republic afforded controlled access to the sea to France and Germany in return for privileges for Dutch vessels on the upper section. The lower section was included in the system after its annexation by France in 1810. The creation of a Commission in 1813 to study hydrotechnical problems on the river, an outgrowth of French interest in this new field, also proved permanent in river organization.

3. Congress of Vienna

a. End of French Domination on the Rhine. The domination of France over the Rhine region was terminated in 1814. Although the existing organization broke down,

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the principle of a central administration remained. A committee of three was appointed by the Allies to administer the river under the old system until definite rules could be established by the Powers.

b. Treaty of Paris, 1814. The Napoleonic wars emphasized the necessity for removing causes of conflict between the Powers. The Treaty of Paris, therefore, laid down general principles to be followed by future Congresses. The principle of free navigation was incorporated into the Treaty. Art. V of the Treaty stated that navigation on the Rhine "shall be free, so that it can be interdicted to no one." Future Congresses were to establish principles regulating Rhine navigation in accordance with Art. V, and to provide for the extension of the system to other international rivers.

c. Congress of Vienna, 1815

i. Freedom of Navigation. In 1815 a committee composed of delegates from Austria, Prussia, Britain, France, the United Netherlands, and the small riparian States met to carry out Art. V of the Treaty of Paris. It soon divided on a question of interpretation: whether Art. V was intended to open the river to all flags, or merely to those of the riparian States. Agreement was finally reached on a purposely ambiguous formula, "navigation shall be entirely free, and shall not, in respect to commerce, be prohibited to anyone." In practice, navigation was limited to riparians until the middle of the 19th century, although equality of treatment for goods and passengers, regardless of nationality, was maintained.

ii. The Central Authority, Its Composition and Powers. The central authority was retained. However, after considerable discussion, its organization

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and its sphere of activity were greatly modified. On the one hand, France, and to some extent Prussia, insisted on the need for a strong supranational authority. On the other, the small German riparian States wanted matters left to the jurisdiction of the individual States. A compromise was reached by which the individual States retained responsibility for the upkeep of the river works, and the administration and collection of taxes was transferred to them.

The old authority had represented the two Powers, France and Germany. Actually France had dominated it. However, democratic tendencies in 1815 led to the representation of all riparian States on a Central Commission. In the original plan, Prussia had proposed that voting was to be apportioned equitably, so that each State could be bound by the decisions made by the Commission. This was done successfully in regard to the election of a Chief Inspector. However, no agreement as to the apportionment of voting powers could be reached and the States refused to bind themselves in advance. Therefore, equal representation was resorted to; the decisions of the Commission were taken by an absolute majority of votes, but were binding only on the States consenting to them. Only in judicial matters was the vote of a majority of the delegates decisive without the consent of the Governments concerned.

In virtue of the rule that everything must be dealt with by common consent, the Commission was to draw up definitive "Règlements"[1] for the settlement in

1. In the terminology of Vienna, "réglé d'un commun accord" means settled by common consent, and "Règlement" is the settlement to be made for carrying out the mandate of the Congress. It is therefore much broader than "regulations". Events soon proved that the idea (continued on next page)

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detail of Rhine affairs on the basis of the Final Act of the Congress of Vienna. In a judicial capacity, it could act as a final appellate court, dealing with complaints concerning river affairs. In the course of the discussions, it was decided that the Central Commission should also serve as a means of communication between riparian States on all navigation matters, as a clearing house for information and suggestions.

The Commission, therefore, was an organization designed mainly for voluntary cooperation, but with judicial powers and a limited executive authority. It had only a limited power of decision, but proved to be an important center of authority for river affairs.

iii. Other Provisions. The Final Act of the Congress of Vienna also provided that there should be uniform collection of dues, the number of collecting points being set at twelve; maximum dues should be fixed and increased by common action only; all monopolies and old arbitrary dues were to be abolished, and only dues necessary to defray expenses were to be maintained; each State should collect its own dues, and the proceeds should be distributed according to the size of the river territory of the respective States. Claims concerning navigation dues and all other litigation in matters of navigation were to be dealt with first by nationally appointed judges, and then, on appeal, either by the Central Commission, or by a national Court of Appeals.

(Footnote continued from preceding page)

of the Congress that everything should be settled in the form of a treaty would not work. Amendments to the treaty became more and more frequent, until it became apparent that a distinction should be made between the Treaty, or Act of Navigation as it came to be called, and the Règlements, or Regulations for the Police of Navigation.

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In addition, complaints could be presented to the Inspector General and his staff. The neutrality provisions of 1804 were included and the system was extended to cover the whole Rhine from the Swiss boundary to the sea. Règlements were to be drawn up by the Central Commission on the basis of these principles, and approved by the riparian governments. The new system was not to go into effect until such action had been taken.

4. The Rhine from 1815-1868

a. Difficulties Between Prussia and the Netherlands.

Difficulties arising between the Netherlands and Prussia prevented early agreement on the Règlements. The argument hinged on the words "jusqu'à la mer".[1] The Dutch argued that this meant no farther down the river than where the tide is felt. This interpretation aimed at maintaining national control over maritime traffic to and from the Rhine. On the other hand, Cologne refused to give up her special privileges until there were sufficient modification of the Dutch position to allow the city to function also as a seaport. Prussia, in support of Cologne, further hindered the Commission's work by withdrawing her representative from the meetings and withdrawing her share in the funds for its activities. In the meantime, river affairs were managed according to the principle of 1804, as modified by the Congress of Vienna, whenever no disagreement prevented.

However, the introduction of steam navigation upset the system of monopolies and transshipment along the river. As a result, Cologne lost her predominant position as a river port. On the other hand, the change

1. In Art. I, Annex 166 of the Final Act of the Congress of Vienna (see also Art. CIX of the Final Act, "jusqu'à l'embouchure").

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in transport conditions tended to reduce Rhine traffic, and to divert it to Le Havre and Hamburg, at the expense of the ports of the United Netherlands. These changes made a settlement possible, and direct negotiations were opened between Prussia and the Netherlands in 1827. A compromise was reached in 1830. After new difficulties caused by the Belgian revolution, this compromise served as a basis for final discussion in the Commission.

b. Convention of Mainz, 1831. As a result of the prolonged negotiations, the provisions of the Congress of Vienna were not put into force on the Rhine until 1831, and then not completely.

The chief departures from the principles of Vienna in the Convention of Mainz, 1831, were those necessitated by the Dutch-Prussian compromise. Riparian vessels were not compelled to transship or break bulk in the Netherlands. (This applied only to "vessels of subjects of Riparians, belonging to the navigation of the Rhine".) Other riparian vessels were on an equal footing with Dutch vessels with regard to charges on the use of port and pilot facilities. The Lek above Krimpen, and the Waal above Gorinchem[1] were considered as continuations of the Rhine in the Netherlands, and the Netherlands undertook to open other equally good channels below these two points if these should accidentally, or as a result of public works undertaken by the Netherlands, cease to give access to the sea. Transit facilities were guaranteed in the free ports of Amsterdam, Rotterdam and Dordrecht. Customs duties were limited to the amounts paid at land frontiers. Necessary changes in the Convention were to be made on the proposal of the

1. Krimpen and Gorinchem were somewhat fictitiously agreed upon as the uppermost point where the tide is felt.

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Commission, with the approval of the riparian Governments. The other provisions of the Congress of Vienna, which had not been seriously questioned, and, in fact, had been in effect for most of the sixteen years, were not changed.

c. Developments Affecting Rhine Navigation Between 1831-1868, and Adaptation of the International System to Meet these Changes. With the signing of the Convention of Mainz in 1831, a period of normal development began on the Rhine. The German Customs Union, insofar as the Rhine was concerned, was virtually completed by 1836. This economic union among Prussia and the small German States made the imposition of dues throughout the area completely undesirable. At the same time, the expanding railroads were offering severe competition to Rhine navigation, which was hindered by navigation dues and charges, and by the inadequate attention paid to necessary river works by the riparian States. The rapid growth of steam navigation, and the development of corporate boat companies further emphasized the need for improvements throughout the Rhine system.

The period was therefore characterized by a very gradual extension of the principle of free navigation, by the reduction and eventual elimination of dues based solely on the fact of navigation, by the inauguration of a hydrotechnical program on the river, and by the growing importance of the Central Commission in river affairs.

New problems not foreseen by the Convention of Mainz greatly extended the quasi-legislative activities of the Commission. Attention to detail made the Convention of 1831 quite rigid, and many changes were needed. After 1840, a new procedure for revising the Règlement, which made it easier to achieve the necessary changes,

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came into practice. Under the new procedure, the text of the amendment was agreed upon in the Commission and brought into force without formal ratification by the States. The amendment was still subject, however, to their subsequent approval. This development paralleled the growth of parliamentary control over the treaty-making power in Europe.

During the period, the juridical activities of the Commission gradually increased, although the jurisdiction of the Rhine Navigation Courts as fixed in the Final Act of Vienna had been whittled down by the Convention, particularly with regard to claims against States. The Commission exercised fiscal jurisdiction over the collection of dues and port charges, penal jurisdiction over the infringement of rules set up for the administration and safeguarding of navigation on the river, and jurisdiction in certain matters of private law, such as claims for damages in collision cases.

Application of the principles of Vienna to the Rhine had been based on a strict interpretation of the Articles. As a result there was considerable criticism of the Rhine system, where freedom of navigation appeared to be curtailed (jusqu'à la mer) and limited to riparian States. General dissatisfaction with the Rhine system was intensified by the discussions leading to the establishment of an international system on the Danube in 1856, which emphasized a liberal interpretation of the Congress of Vienna. With the establishment of the North German Confederation in 1866 through the absorption of Hessen-Nassau by Prussia, the composition of the Central Commission changed. In view of the changes in conditions of navigation along the river and in the administration of river affairs, it was therefore

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decided to revise the Convention of 1831.

5. The Rhine from 1868-1919

a. Convention of Mannheim, 1868

i. Freedom of Navigation. The principle of free navigation was given full support by the Convention of Mannheim. "Navigation on the Rhine...as far as the high sea, shall be free to the ships of all nations for the transport of merchandise and passengers...(insofar as they) conform to the provisions of the Convention and to the police regulations required by public safety." The Convention did not remove completely certain discriminations between riparian and nonriparian vessels. There was some concession in the fact that the nationality of the person requesting a license was immaterial if he fulfilled the other requirements, but the right to navigate was limited to those with four years of experience on the river, and who had received licenses from the riparian States in which they were domiciled.

ii. Powers of the Central Commission. The Central Commission itself was empowered to examine and pronounce upon any complaints and deficiencies concerning the application of the Convention or the Règlements provided under it, and concerning the measures which may have been adopted by common agreement (for example, decisions concerning public works), and to deliberate on proposals concerning the prosperity of navigation, especially those which tended to modify or complete the Convention and the Règlements. Resolutions were taken by an absolute plurality of votes, given in perfect equality. They became obligatory for each riparian State only after approval by the government.

The fiscal jurisdiction of the courts was curtailed with the abolishment of all dues based solely on the fact

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of navigation. This led the Netherlands to ask for suppression of all the international judicial functions. However, the system of Navigation Courts established by the international statute provided for the execution of judgments in all States and was therefore important. That an international court for river affairs should have appellate jurisdiction, both penal and civil, was not questioned at the time by the other riparian States.

iii. Hydraulic Subcommission. A commission of engineers from each State was given investigative and advisory power to examine the technical condition of the waterway, and to make suggestions for conservation and improvement to the Central Commission.

iv. Other Provisions. The principle of equal treatment between the Rhine and the land frontier in import and export duties was maintained and supplemented by the rule that "any facilities which may be granted by the contracting Powers on either land or waterways for the importation, exportation and transit of merchandise will equally be granted to importation, exportation, and transit on the Rhine." The office of Chief Inspector, last remnant of the strong centralization of the Napoleonic era, was abolished. The waterways connecting the Rhine to the Schelde as far as the Belgian boundary were included in the multilateral system. The neutrality clause of past conventions was omitted under Prussia's influence. The fact that it was originally established to promote the collection and distribution of dues which no longer existed was used as a reason for doing away with it.

b. Further Developments in the Rhine System from 1868-1919. The territory of Alsace-Lorraine, which had been taken over by the German Empire after 1870, became

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a Land (State) of the Empire in 1911. The Commission was then composed of the Netherlands, Prussia, Hessen-Darmstadt, Bavaria, Baden, and Alsace-Lorraine. The German States continued to be represented separately, and retained control over their individual interests in navigation on the Rhine.

An increase in the carriage of heavy bulk goods on the river emphasized the importance of deepening and stabilizing the channel to avoid expensive transshipment charges and other difficulties. Hydrotechnical considerations grew in importance as works such as the regularization of the Rhine above Mannheim were undertaken, and these problems played an increasing part in the activities of the Commission.

The question of dues was reopened by the change in the German Constitution in 1911 that permitted the collection of dues on artificial inland waterways. This provision did not apply to the Rhine, as the Netherlands refused to agree to its enforcement. The river remained exempt until 1917, when Germany unilaterally imposed dues on all navigation passing through her territory, and collected them in spite of all protests.

B. The Scheldt

1. The Scheldt to 1831. The Scheldt was permanently closed to the Southern Netherlands (Belgium) by the Treaty of Münster. It remained closed, despite continuous protest by the city of Antwerp and negotiations by Joseph II,[1] until the Decree of the Conseil Executif, 16 November 1792. At this time the French opened the river: "no nation can ... claim the right to exclusively occupy the channel of a river".

1. Treaty of Fontainebleau, 1785. Belgium received 10,000,000 florins as compensation for the river remaining closed.

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By Art. III (secret) of the Treaty of Paris, 1814, and the Congress of Vienna in 1815, the river was considered part of the Rhine system, and freedom of navigation was declared. The Schelde remained open until 1831 when, during the Belgian revolution, it was closed to maritime traffic by the Dutch, acting under the Treaty of Münster. It was reopened in 1831 at the instigation of the Powers. Now that the Southern Netherlands were again separated from the Northern Netherlands, the guarantees of 1814-1815 were found inadequate. Therefore, at a conference called in London to deal with the Belgian question, the special problem presented by the Schelde was taken into consideration. State practice tended to divide the river on the basis of maritime navigation (use of the river for access to and from the hinterland) and fluvial navigation (use of the river as part of the Rhine system). This peculiar development of two statutes applicable to the same waterway would unavoidably lead to conflicts of rules and of authority but for the fact that in matters where the territorial character of a regime is most tangible -- public works, rules of the road, navigation tribunals -- the Rhine regime did not extend below Gorinchem and Krimpen or, at least, south of the main channels connecting the Rhine with the sea. Thus, it did not apply on the western Schelde where this duality occurs.

2. Maritime Navigation

a. Conference of London, 1830-1839, Treaty of London, 1839; Provisions Dealing with Maritime Navigation. At the Conference of London, beginning in 1830, Belgium demanded that pilotage, buoying, police, and upkeep be subject to joint supervision by Belgium and the Netherlands. Although the Dutch fought this as a

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negation of sovereign rights, the Powers backed Belgium, and the Netherlands was forced to agree to a compromise.

The Treaty of London, 1839, provided that pilotage dues were to be fixed in common, and were to be the same for vessels of all nations. Parallel Belgian and Dutch pilotage services were provided. Both countries agreed to preserve navigable channels, and to "place and maintain therein the necessary beacons and buoys". As a half-way measure between the free navigation principle and the Treaty of Münster, tolls of a fixed sum, based on vessel tonnage, could be levied by the Netherlands. Supervision was to be exercised in common by the delegates of both nations.

b. Treaty for the Redemption of the Schelde Toll, 1863. As a result of the general trend toward the liberalization of all restrictive fiscal policies on the river systems of Europe, the Powers undertook to persuade the Netherlands to abolish navigation dues on the Schelde. This was done in the Treaty for the Redemption of the Schelde Toll of 1863. It applied equally to all nations, and such dues were not to be re-established under any form whatsoever. In return, Belgium agreed to pay an indemnity to the Netherlands. The necessary funds were furnished, not by Belgium alone, but by the Powers who were signatories of the Treaty, each contributing a fixed amount determined on the basis of the share at this time of each flag in the traffic, and incorporated into the Treaty.

c. Works of Upkeep and Improvement. As the demands of navigation and technical improvements became more important, Belgium was led to pay an ever-increasing share of the expenses of such work. The conditions under which such payments were made were often considered by

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Belgium to be unduly rigid.

d. Breakdown of the International System during World War I. There was no major change on the Scheldt until 1892. At this time, Belgium agreed that the Dutch were to have full liberty of action regarding the maritime Scheldt in case of war. The rule that there was to be no change in lights, buoys, high and low water markers, and other signals, except by common consent, had been well-established by agreements in 1866 and 1881. Nevertheless, the agreements of 1892, 1902, 1905, and 1908 permitted the Netherlands to remove all markers, beacons, etc. This was done by the Netherlands in 1914 soon after the outbreak of war. It virtually put a stop to all night navigation on the Scheldt, and necessitated the use of Dutch pilots at all times.

3. Fluvial Navigation

a. Introduction. The port of Antwerp had been eliminated from the list of free ports of the Rhine as a result of the Belgian revolution in 1830-31. However, agreements concluded in subsequent years between the Netherlands and Belgium, on the one hand, and each of the upper riparian States and the Netherlands on the other, established a regime for the connection between the Lek and the Waal and the Belgian boundary, which was substantially the same as that between these two branches of the Rhine and the high sea.

b. Treaty of London, 1839, Provisions Dealing with Fluvial Scheldt. The Treaty of London provided that navigation on the Oosterr Scheldt and navigation on the intermediate waterways between the Scheldt and the Rhine were to be reciprocally free, though subject to moderate dues which were not to exceed, in proportion to the distance, those levied between Gorinchem and the high seas under

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the Convention of Mainz. Moreover, it was stated that "if natural events or artificial works should hereafter render impracticable the waterways mentioned in the present Article, the Government of the Netherlands shall assign to Belgian navigation other waterways equally safe, and equally good and commodious, instead of the said waterways become impracticable".[1]

c. The Treaty of Limits, 1842. The Treaty of Limits between Belgium and the Netherlands in 1842 and the Convention of 1843 further clarified the provisions of the Treaty of London, and extended the system the whole way between the Wester Scheldo and the Rhine. A regime analogous to that of the Convention of Mainz was stipulated, but the concessions granted by the Netherlands were limited to the Belgian flag.

d. The Scheldo from 1842-1919. In the Convention of Mannheim, 1868, the question of fluvial navigation between the Rhine and Antwerp was dealt with once again in a general Rhine navigation convention. The choice of routes through the netherlands to and from either Belgium or the high seas was free to individual vessels, and the guarantee of another route, should the present one between the Netherlands and Belgium be closed, was extended to all riparian States. As the Belgo-Dutch Treaties and Conventions were not brought into harmony with the Mannheim Convention, unforeseen discrepancies arose between the system on the Rhine and that on the intermediary waterways. Navigation dues on the

1. The Netherlands availed themselves of this right in 1846, when they announced the plan for the building of the Hansweert Canal and their intention to make no further effort to keep the Ooster Scheldo open. This was done, notwithstanding Belgian protests that the new waterway did not fulfill the conditions of the Treaty of London.

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intermediary waterways were, however, abolished. After 1868, the regime as outlined above was not modified.

C. The Danube

1. Introduction. Turkey's domination over the middle and lower course of the Danube prevented extension of the Vienna system to the river in 1815. Negotiations between Turkey and interested nations for navigation privileges proved fairly satisfactory. However, the Treaties of Bucharest (1812) and Adrianople (1829) brought Russia to the banks of the river with full control over the Kilia Branch, the Sulina mouth, and all the delta islands. Countries wishing to participate in Danubian trade now had to negotiate with Russia. This proved to be increasingly difficult.

Great Britain had a considerable interest in the grain trade of Rumania, now free from direct Turkish control. The development of steam navigation on the upper river gave Austria a direct interest in the outlet for greatly increased trade. On the other hand, Russia had very little economic interest in the Danube region. The Rumanian grain trade offered direct competition to the port of Odessa. Increased Austrian shipping at the Danube mouth threatened Russia's complete control of the Black Sea. It was to Russia's interest, therefore, to make navigation as difficult as possible.

The situation was temporarily eased in 1840 by the Convention relative to the Navigation of the Danube, signed at Saint Petersburg. Russia agreed to keep the Sulina mouth open. There was some effort to apply the principles of Vienna to the Danube at this time. However, the Convention had little effect, and navigation at the river mouth became increasingly difficult.

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Strict quarantine restrictions and failure to dredge the river mouth had almost stopped navigation in the lower river by the outbreak of the Crimean War. Russia's defeat at this time and the entrance of Turkey into the community of nations made it possible to bring the Danube question before the European Powers for settlement.

2. The Danube from 1856-1881

a. Treaty of Paris, 1856. In the Treaty of Paris, 1856, the signatories declared that "in the future these principles (the principles established by the Congress of Vienna) will apply equally to the Danube and to its mouths. They declare that this arrangement "henceforth forms a part of the Public Law of Europe and take it under their guarantee." As applied to the Danube, the Permanent Court of International Justice declared that the principles of Vienna, within the meaning of the Treaty of 1856, provided for the "establishment of special offices for the collection of dues, and for the appointment in each State of special judicial offices to determine, in the first instance, in the name of their sovereign, disputes relating to the regulations.[1] Appeals from the decisions might be taken either to a superior tribunal of the country or to a Central Commission, set up in order to establish a perfect control over the observance of the general regulations, and to serve as an authoritative means of communication ..... on all subjects relative to navigation."

1. Origin of the European Commission. In view of the virtual stoppage of all traffic at the river mouth, the Powers decided to take upon themselves

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1. The official English text is here a bad translation of the French; "disputes relating to the regulations" should be literally "all litigation concerning matters settled in the Règlements".

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responsibility for opening this section to navigation. For this purpose, a temporary European Commission, composed of one delegate from each of the signatory Powers, with jurisdiction from Isaccea (Isatchka) to the sea, was expressly charged with the task of freeing the Danube mouth and adjoining seas from sandbanks and other obstacles to navigation. The Commission was given power to levy fixed dues on all vessels, the amount to be determined by the Commission. In this respect, as in every other, flags of all nations were to be treated on a footing of perfect equality.

ii. Provisions for a Riparian Commission. The whole of the navigable Danube was to be under the jurisdiction of a Riparian Commission, composed of one delegate from each riparian State including the two Danubian Principalities (present-day Rumania). This Commission was to be a permanent body entrusted with the maintenance of navigability throughout the river. When the European Commission had completed its task, its duties and powers were to be transferred to the Riparian Commission. In addition, the Riparian Commission was given the immediate task of preparing the Règlement for Navigation and River Police, and of removing all impediments of any kind to the application of the principles of the Congress of Vienna.

b. Act of Navigation of the Danube, 1857. The Riparian Commission presented its draft of the Règlement to the Powers for approval in 1857.

i. Provisions of the Act. Navigation between the high seas and Danube ports, and to and from other inland waterways communicating indirectly with the Danube and Danube ports was declared free to all flags. By Art. VIII navigation between Danube ports was

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expressly reserved to the Danubian States. Only vessels belonging to and operated by licensed subjects of any riparian State could engage in this trade. All arbitrary charges and dues based solely on the fact of navigation were abolished. Transit was to be free; the Danube was to be treated with respect to customs not less favorably than the land frontier. Provisions for customs and health formalities followed. The Governments reserved the right to establish detailed regulations by common agreement in the Riparian Commission, to carry out works which the Commission, acting in common agreement, judged necessary, and to defray expenses by levying dues fixed by the Commission on all vessels within their jurisdiction.

ii. Objections to the Act. Several of the provisions of the Act of 1857 were highly unsatisfactory to the nonriparian Powers. First, Article VIII, limiting inter-Danube trade to riparians was contrary to the principles established at Paris. The details concerning licensing and monopolies were aimed at upholding the privilege of Art. VIII, rather than providing safeguards for the conduct of navigation. Secondly, the Règlement did not include the tributaries of the river. In the third place, the riparian States in effect, reserved the power to change the proposed Act with no provision for submitting such legislation to the Powers for approval. Additional Articles designed to meet the objections to these provisions were also unsatisfactory.

iii. Responsibility for Unsatisfactory Provisions of the Act. Responsibility for the restriction of navigation provided by the Navigation Act of 1857 can be attributed mainly to Austria. Austria had to indemnify the Austrian Danube Steam Navigation Company for the loss of its monopoly. It was decided to make up

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the loss in revenue that the company would suffer for a time by direct payments from the State. The size of such payments varied inversely with the revenue the company could earn under the new system. Therefore, it was definitely to Austria's advantage to prevent application of the Vienna principles to the Danube.

iv. End of the Riparian Commission. In the end there was no agreement of the Navigation Act, and each riparian State drew up its own laws. Owing to difficulties of one kind or another, especially the constant threat of trouble in the Principalities, the Riparian Commission did not meet for a considerable period, and at the Conference of London its convocation was indefinitely postponed. Practically speaking, this was the end of the Commission.

c. Public Act of 1866; Recognition of the Work of the European Commission. At the same time, owing to the complexity of its task, the European Commission had been left intact throughout the period. The Riparian Commission's inability to function contributed directly to the unplanned extension of the life of the European Commission. The work of the latter had been so satisfactory that the Powers decided to endow it with a sort of charter, defining its rights and duties. Into this were incorporated the Regulations for Navigation and River Police that the European Commission had drawn up during the first years of its work to control the chaotic conditions at the river mouth.

All works and installations on the maritime Danube were put under the guarantee of international law. The European Commission was "charged, to the exclusion of all interference whatever, to administer these works". Power to undertake works on the St. George mouth was

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reserved to the Commission. No one -- State, company, or individual -- could undertake any works on the maritime Danube without first submitting the plan to the European Commission for approval. Supervision was to be under the Inspector General of the Lower Danube and the Captain of the Port of Suline, both Turkish officials working directly under the control of the Commission. These officials were to exercise their powers over all flags without distinction. Navigation was to be regulated by the Regulations of Navigation and Police applicable to the Lower Danube, annexed to the Public Act of 1865 (see above). These Regulations were to be considered binding as law for policing of the river, and for judgment of cases of civil procedure arising from navigation.

d. Convention for the Guarantee of a Loan, 1868; Increase of Financial Power of the European Commission. The large sums needed for the works undertaken by the European Commission could be raised only by loans. To enable the Commission to do this on advantageous terms, and to complete river works without placing too heavy a burden on vessels on the Lower Danube, the Powers provided mutual guarantees for a loan of 135,000 pounds sterling to be negotiated by the Commission.

e. Conference of London, 1871; Extension of the European Commission and Special Provisions for the Iron Gates Sector. The Conference of London was called in 1871 to discuss the situation created by Russia's refusal to respect the neutrality of the Black Sea in the future. The Danube question was again discussed. The European Commission was maintained in the same form, and its life was extended twelve years to 1883, the term of redemption of the loan contracted as provided in 1868.

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The Conference attempted to provide for navigation works along the upper course of the river, particularly at the Iron Gates, by authorizing the riparian States to come to agreement about construction, and to levy a provisional tax on all flags for repayment of a loan contracted for this purpose. However, the riparian States could not agree, and no work was started at this time.

f. Congress of Berlin, 1878; Distinction Between Fluvial and Maritime Danube. The Powers met in Berlin in 1878 to revise the Russo-Turkish Treaty of San Stefano, which was not considered acceptable. The Articles of the Act dealing with the Danube provided that the "European Commission, of which Rumania[1] shall be represented, is maintained in its functions and shall exercise them henceforth as far as Galatz (Galati) in complete independence of the territorial authorities." A Règlement dealing with navigation, river police, and supervision from the Iron Gates to Galati was to be drawn up by the European Commission, assisted by delegates of the riparian States concerned. The execution of works at the Iron Gates and Cataracts was entrusted to Austria-Hungary, who was also empowered to levy the provisional tax provided for in 1871 to meet expenses.

The Congress of Berlin, therefore, provided for a new regime beyond Galati. Thus it clearly defined for the first time the practical division between the maritime Danube and the fluvial Danube upon which all later regimes for the river were based.

3. The Danube from 1881-1919

a. Final Development of International Organizations on the Maritime Danube. In 1881, the Powers met

1. The Commission now included delegates from Germany, Austria-Hungary, France, Great Britain, Italy, Rumania, Russia and the Ottoman Empire.

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and drew up an Additional Act to the Public Act of 1865, to bring the earlier Act into harmony with the Treaty of Berlin. The Inspector of the Lower Danube and the Captain of the Port of Sulina became exclusively officials of the Commission. They and their agents were to be named by the Commission by a simple majority of votes, without distinction of nationality. Their salaries were paid by the Commission, and they acted and pronounced judgments in the Commission's name. Management of the funds was placed exclusively in the hands of the European Commission.

The temporary body set up in 1856 to clear the mouths of the Danube from obstructions had now evolved into a quasi-sovereign organization, independent of any territorial sovereign authority, acting in a deliberative and executive capacity with its own financial system and its own ships, flag, and personnel, appointing and replacing its own agents, and insuring by its own means the conservation, improvement, management, and policing of the waterway. To enforce its authority, the Commission had power to call on specified warships stationed by the Powers at the river mouth.

b. International Organization on the Fluvial Danube; the Problem of Representation. The Congress of Berlin had tacitly recognized the failure of the Riparian Commission on the upper river, and had provided for a new Règlement for the river between the Iron Gates and Galati, but it had not determined the composition of the body which was to supervise river affairs once the Règlement was approved. Austria saw an opportunity to establish her supremacy over the river to Galati by obtaining a Commission that would be adequately weighted in her favor.

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Therefore, Austria suggested that the new Commission be made up of delegates from the riparian States and Austria-Hungary (a nonriparian), the Austro-Hungarian delegate to occupy the President's chair, and to have the casting vote in the event of equal decision. Rumania protested bitterly, suggesting instead a Commission of riparians and two delegates from the European Commission, these delegates to rotate every six months. This in turn was unacceptable to Austria-Hungary. In the end, a compromise was suggested by the French delegate providing for representatives from the riparian States, a permanent President from Austria-Hungary, and a delegate from the European Commission, rotating every six months, to balance Austria on the Commission. Although this was adopted, Rumania refused to accept it.

c. The Treaty of London, 1883: Provisions and Effect of the Treaty. This compromise, and the Reglement for Navigation and River Police drawn up by the European Commission and the riparian delegates were put into force by the Treaty of London of 1883. At this time the life of the European Commission was extended in full powers for 21 years, and was to be renewed automatically each three years thereafter, unless one of the signatories notified her desire to discuss modifications of its organization or authority. Its jurisdiction was extended to Braila. Control of the Kilia Branch was reserved to Russia, where that country held both banks, and to Russia and Rumania elsewhere.

The chief purpose of the Treaty of London was to preserve the existence of the European Commission. Every other consideration was subordinated to this, and concessions were necessarily made both to Austria-Hungary

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and to Russia to achieve the greater end. Rumania was refused full participation in the discussions. In return, she refused to appear at all, and notified the Powers that she would not consider as binding on her Government any provisions adopted there, necessarily without her consent. In fact, the new Commission did not come into existence.

d. General Characteristics of the Danube Regime. Legislation by the Powers for the Danube from 1856 to 1919 confirmed the liberal interpretation of the principles of Vienna, established a plurality of regimes along the river, and maintained and confirmed an exceptional institution in form of the European Commission. The Treaty of 1883 might be said to have disregarded the sovereign rights of the lower riparians, and, indeed, was never recognized by one of them, Rumania. However, in practice, Rumania and the other States on the European Commission worked together to achieve the maintenance of free and unobstructed navigation. After the outbreak of the World War, the European Commission found it increasingly difficult to act. When Bulgaria entered the war in 1915, the Commission gave up its meetings entirely, pending a settlement of the conflict.

D. Other European Rivers

1. The Elbe

a. The Congress of Vienna, Treaty of Peace Between Saxony and Prussia, 1815. After the completion of the work concerning the Rhine and the Scheldt, the Waterways Commission of the Congress of Vienna drew up general Articles for the Final Act of the Congress, to apply to any river separating or traversing two or more States. The Articles provided for the appointment of Commissioners to settle by common consent all that concerned navigation

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on these rivers. In general, navigation was to be entirely free, and was not, "in respect of commerce", to be prohibited to anyone. The regime was to be as uniform as possible along the whole course of one river, and to extend to whatever branches and junctions separated or traversed two or more States.

Dues were to be determined by local circumstances, and in no case to be higher than before the settlement. Once settled, they were not to be increased except by common consent. No new forced dues and no arbitrary charges were to be levied, and the old ones were to be discontinued as soon as consistent with the good conduct of navigation. The location of collection offices was to be agreed upon, and their number was not to be increased without common consent. Customs functions were to be confined to the banks of the river. Each riparian State was responsible for the maintenance of towpaths and works in the bed of the river, in order to prevent obstacles to navigation. This was implemented so far as part of the Elbe is concerned by the Treaty of Peace between Saxony and Prussia in 1815.

b. Convention of 1821, Commission for the Elbe.

A Convention purporting definitively to apply to the Elbe the principles established at Vienna was signed by all the riparian States in 1821. Freedom of navigation was limited to riparians, and navigation between the ports of two riparian States was "exclusively confined along its (the river's) whole course, to the respective subjects of those States." Riparians assumed responsibility for the upkeep of towpaths and the removal of obstacles to navigation, and undertook not to permit any works in the channel or on the banks that might be injurious to navigation. All monopolies

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were abolished. However, the Convention did not apply to ferries, or to navigation within the territory of one State. A uniform general navigation due, applying to all vessels and cargos, and payable at certain specified places fixed by this Convention, was substituted for any previous levies. The tolls devised at Stade were temporarily barred from discussion, but Hannover engaged to present this problem for settlement at an early date. The Convention as a whole was to be put into effect by separate agreements.

A Commission of Revision was to assemble from time to time to revise tariffs and offer an opportunity for discussion of other problems. By Art. XXX, a diplomatic body composed of plenipotentiaries of the States was empowered to watch over the due observance of the present Convention. It was to constitute an authority that might serve as a means of communication between riparian States for the disposal of complaints, and to deliberate upon measures that might facilitate commerce and navigation. The members of the Commission were to lay tentative arrangements before their separate Governments for decision.

c. Abolition of the Stade Tolls. In a general riparian Convention in 1844, Hannover agreed that the Stade tolls should be subject to the Commission of Revision on the same basis as any other dues, and that most-favored-nation treatment should be accorded to the riparian States. This was followed in 1861 by a general Treaty including the majority of the European States, which "completely and forever abolished" the Stade toll for the benefit of all Signatories or States which might later adhere to the Treaty, and forbade the substitution of any new duty. A sizable compensation fund was

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furnished by the Powers, based on the share of each in the traffic, to indemnify Hannover.

d. German Unilateral Action in Regard to Dues.

The movement toward unification in Germany made possible increasing simplification of navigation dues on the Elbe. A Treaty was signed between Austria and the North German Confederation in 1870, abolishing all dues on the river except those for the use of special installations designed to facilitate traffic. This rule was repeated by Article 54 of the Constitution of the German Empire, April 1871 which applied to the Elbe in Germany. "On all natural waterways, dues may only be levied for the use of special installations intended for facilitating traffic. These dues, as well as the dues for the use of artificial waterways insofar as they are the property of the State, shall not exceed the amount required for the maintenance and ordinary repair of such installations and works". The position of foreign vessels and their cargos was safeguarded by the following provision: "the power to levy other or higher dues upon cargoes shall belong only to the Empire and not to the seperate States." In practice, no discrimination was made.

The Constitution was altered in December 1911. The word "special" was deleted, and "installations" was completed by the addition of "works or establishments" in parentheses. The omission of "special" was intended to permit dues being levied for regularization, deepening by dredging, removal of obstacles, and similar work. The addition of "works or establishments" was to permit dues covering such expenses as river police. To all intents and purposes, the amendments removed the distinction between natural and artificial waterways. In future, duties were to be allowed to cover the cost of

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creation and upkeep, the cost comprising interest on and amortization of the capital. Thereafter, the Elbe regime underwent only minor changes until the World War.

2. The Oder

a. International Character of the Oder. It is a question whether the Oder was considered international before the Treaty of Versailles. The European boundaries fixed by the Congress of Vienna did not in themselves seem to give an international character to the river as a whole, unless it were navigable beyond the Austro-Prussian boundary of 1815. A part of the river, at least, would have such character, however, if the Warta, an affluent of the Oder were naturally navigable above the Prussian boundary. There is no conclusive evidence on either side. At least one of the delegates at the Congress of Vienna assumed that the provisions of the Congress would apply to the Oder. This was the French delegate, who in one of the early discussions on general rules for international rivers, included the Oder in the list of rivers to be dealt with by the Congress. However, no special treaties were made at that time concerning the Oder.

b. The Treaty of Commerce and Navigation, Prussia and Russia, 1818. In 1818, a treaty was signed between Prussia and Russia, supplementary to the Treaty of Vienna and not limited in duration. It stipulated that all the territory of old Poland (the boundaries of 1772) between the Duna (Danube), the Dniester, the Oder, and the sea came within the scope of the Treaty.

Wherever the Treaty did apply, navigation and the use of ports were open to the subjects of both parties with common use of facilities along the river, and common police regulations. No new dues were to be placed upon navigation, and old dues were in no case to

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be raised without the consent of the other riparian States. National treatment on the river was to be accorded to subjects of both Parties, and in no case were cliens to pay higher dues than nationals.

Since the Warta is unquestionably navigable beyond the boundary of 1772, the international regime applied to it, and, it may be assumed, to the Oder below the confluence of the two rivers as the outlet to the sea. Above its confluence with the Warta, however, the national or international character of the Oder is immaterial.

Notwithstanding its permanent character, the Treaty of 1818 was abolished in 1825 and replaced by an ordinary commercial convention, the validity of which was limited in principle to nine years.

3. The Vistula

a. Treaty of Tilsit, 1807. The first attempt to apply the new liberal principles of the era to the Vistula was in the Treaty of Peace between France and Russia signed at Tilsit in 1807. No riparian State could "prevent by any prohibition, nor hinder by the establishment of any toll, dues or impost of any kind whatever the navigation of the Vistula."

b. Congress of Vienna, Final Act and Annexes. The Vistula was one of the rivers covered by Art. 14 of the Final Act of the Congress of Vienna which provided that "the principles established for the free navigation of the rivers and canals in the whole extent of ancient Poland (before 1772) as well as for the trade to the ports ..... shall be invariably maintained."

Treaties signed between Russia and Prussia and Russia and Austria in 1815, and annexed to the Final Act, uphold free navigation, for riparians only, on

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the rivers and canals of old Poland. This principle was to apply to all streams made navigable, and canals opened in the future as well. Tonnage and towage duties were to be levied equally on the subjects of the two Powers. Both treaties provided for fixed, moderate navigation dues, based on tonnage or cargo (the amount to be settled by Commissioners of the States), collected at certain specified places on the territory of each Party on their respective accounts. At this point the treaties differed on the fiscal question. That between Prussia and Russia explicitly abolished all arbitrary feudal dues, the other Treaty merely prevented any increase in the amount of such dues, or discriminatory treatment in their collection. The Commission called to settle the details of these Articles was to finish its work at the end of six months and disband.

c. The Treaties of 1818 and 1825. The actual arrangements made as provided for by the Treaties of 1815 were embodied in the Treaty of Commerce and Navigation between Prussia and Russia of 1818, and a Convention Relative to the Commerce of the Provinces of Poland between Austria and Russia of 1818. Each State was made responsible for the upkeep of towpaths and navigation works. Once dues were fixed, they could not be altered except by common consent. For the Vistula in particular, all dues on navigation were abolished, with the sole exception of the tonnage dues levied in Prussia and safeguarded by Art. 2 of the Treaty between Prussia and Russia.

The permanent arrangements between Prussia and Russia were replaced in 1825 by a limited Convention. This reaffirmed the abolition of all arbitrary charges, and the rule of equal treatment for nationals of both

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States. It suppressed completely the levying of dues on the Vistula and its tributaries. Thus the Prussian dues were at last abolished. Notwithstanding the revision of the permanent Treaty of 1818, the Vistula, in the whole of its naturally navigable course, remained unquestionably an international river. There was no serious modification of these provisions before the World War.

4. The Niemen. As a river within the bounds of old Poland, the Niemen was dealt with by Art. 14 of the Treaty of Vienna, and the Treaty of 1818 between Prussia and Russia. Apart from the Treaty of 1818, the frontiers established in 1815 made it unquestionably an international river within the meaning of the Treaties. The Convention of 1825 specifically abolished dues on the river and its effluents. No other provision was made for the river until the whole Memel question came to the attention of the Powers after the World War.

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III. DEVELOPMENT OF INTERNATIONAL ORGANIZATION FROM 1919-1930

A. The Peace Treaties

1. General Provisions of the Treaties. According to the plans of the Allied Committee that prepared transportation agenda for the Peace Conference, the Peace Treaties were to include general provisions for an international regime of waterways, maritime ports, and railways, as well as for freedom of transit among all the signatory States. Lack of time prevented the formulation of these provisions. Therefore, Art. 379 provided instead that general conventions on these subjects would be concluded and submitted to the approval of the League of Nations. The ex-enemy Powers undertook to adhere to them. In the meantime, a temporary regime was laid down in Articles 332-337 for the Elbe, Oder, Niemen, and Danube river systems. The Vistula was originally included, as it should have been, but was finally omitted, supposedly because of uncertainty of the Polish boundaries. It was understood by the representatives who drew up these articles that the general convention, as of right, would replace the temporary regime among the signatories of the Peace Treaties. However, in the case of the Oder affluents, the Permanent Court of International Justice subsequently put a different construction on this provision.[1] For the Rhine, Art. 354 provided that revision of the Convention of Mannheim would be carried out in harmony with the provisions of the general convention.

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1. Since Poland had not ratified the general convention, the Court decided that it did not apply to the Polish part of the international Oder system, but the Court did not uphold Poland's contention that the jurisdiction of the Commission did not extend to Polish territory. In ratifying the Barcelona Convention, Rumania declared that the Danube Statute should prevail, a reservation which seems incompatible with the Convention.

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2. Specific Provisions. Specific provisions concerning the composition of river commissions stated that the river concerned "shall be placed under the administration of an international commission." In fact, none of these commissions actually administered the river except the European Danube Commission, and that in virtue of a special provision that the European Commission would reassume the powers it possessed before the war. The Oder Commission functioned only for the drawing up of a Navigation Act, a task never completed. A commission was provided conditionally for the Niemen. It was never created.

Special provisions dealt with the Rhine. Certain amendments, made to the Mannheim Convention, aimed mainly to modify the composition of the Commission and to wipe out all inequalities between riparian and nonriparian States on the river. The Commission was to begin work within six months on a revision of the Convention, and provision was made for the Netherlands' adhesion to the Rhine Articles of the Peace Treaty. Special rights, in regard to the building of a lateral canal, and to power and irrigation, were given to France, and to Switzerland if she were to request them. These projects were subject to approval by the Commission, insofar as their effect upon navigation was concerned. Provision was made for a prospective Rhine-Meuse waterway in the region of Ruhrort, to be built when Belgium so desired, and an international regime was stipulated for it. France reserved the option of substituting herself for Alsace-Lorraine with regard to rights and obligations concerning works between Alsace-Lorraine and Baden. Special provisions increased the powers of the Rhine Commission with regard to public works where the Rhine formed the boundary between France and Germany.

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An extension of the jurisdiction of the Commission to the Moselle below the Franco-Luxembourg frontier, and to the Rhine above Basel to the Boden-See (Lake Constance), was foreseen.

B. Belgo-Dutch Negotiations

1. Questions Discussed in the Negotiations. In the Belgo-Dutch negotiations following the World War, Belgium was seeking satisfaction mainly on three questions: agreement of the Netherlands, so far as her territory was concerned, to construction of the Rhine-Meuse canal authorized by Art. 361 of the Versailles Treaty and its continuation towards the Scheldo, improvement of the inland waterway communications between Antwerp and the Maal (Antwerp-Moerdijk Canal), and a more effective and flexible statute for the Schelde. Negotiations begun at the Peace Conference under the auspices of the Supreme Council answered the Belgian demands, but broke down on the question of sovereignty over the Wielingen Channel which both countries claimed. Later negotiations, culminating in the Draft Treaty of 1926, took up these questions again.

a. Rhine-Meuse-Schelde Canal. The Rhine-Meuse-Schelde Canal had been initiated by Napoleon, but had been abandoned at a point near Venlo 1812. In Art. 12 of the Treaty of London, 1839, the Netherlands had engaged to extend across the narrow part of southern Dutch Limburg from the Meuse to the German frontier, at Belgium's expense, a route that Belgium might build from the Schelde to the Meuse. This option was used by Belgium in 1863 in the form of a railroad. Under the existing arrangements, no further construction could be demanded. By 1919, however, the railroad facilities had become insufficient for the traffic, specially that of the Ruhr. The Peace Conference,

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therefore, granted Belgium the option of a canal, but as the Netherlands was not party to the Treaty, it was necessary to secure her agreement separately. This was obtained in Art. VI of the Draft Treaty of 1926. The location, technical details, and administration of the projected canal were dealt with in some detail.

b. Improvement of Inland Waterway Communications. The waterway connections between Antwerp and the Rhine Delta had been the subject of long and difficult negotiations. Belgium was never fully satisfied by the solutions evolved in the 19th century,[1] and after the World War, again began to demand improvements on this route. Specifically, she wanted permission to build a canal between Antwerp and Moerdijk. In the Draft Treaty, the Netherlands assented to this.

c. A More Flexible Regime. As regards the Scheldt below Antwerp, Belgium wanted a more flexible regime, and an organization for the Scheldt that would take into account the need for objective and speedy decisions. As a result, the Draft Treaty of 1926 dealt in considerable detail with international organization in an effort to meet Belgian objections.

d. Limburg Canals. In addition to these three points, there were minor ones, one of which, the feeding of the Limburg Canals, was later carried to the Permanent Court of International Justice for decision.

2. Failure of the Draft Treaty, and New Negotiations. The Draft Treaty of 1926 was a liberal instrument, giving a considerable degree of satisfaction to Belgian interests. However, the Dutch Parliament failed to give its approval, because powerful interests militated against it. Subsequent efforts to negotiate a new agreement were

1. See Section II.

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unsuccessful. The 1939 Agreement between Belgium, France, and the Netherlands demonstrated a willingness on the part of Belgium and the Netherlands to settle their difficulties that might have led to new negotiations on the matters discussed above, had it not been for the outbreak of war in that year.

C. The General Convention of Barcelona

1. Discussions Leading to the Barcelona Convention. To implement Art. 379 of the Versailles Treaty, the French Government, shortly after the Peace Conference, invited a Committee of Enquiry on Freedom of Communications and Transit to meet in Paris. The Allied and Associated Powers were represented, on this Committee, largely by the delegates who had represented them on the Ports, Waterways, and Railways Commission of the Peace Conference; in addition, a certain number of neutral States were invited to participate. This Committee, later the Provisional Committee for Communication and Transit of the League of Nations, drew up a draft of the general convention.

The first general Conference on Communications and Transit was called by the First Assembly of the League of Nations. It met at Barcelona early in 1921. The general convention on waterways was concluded in April of that year. Like the other general conventions, it was divided into two parts, the formal (Convention), and the substantive (Statute).[1]

2. Classification of Rivers. The conference was unable to find a general criterion which would distinguish between waterways of primary international concern and lesser waterways falling within the general definition.

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1. This was done for reasons connected with the constitutional peculiarities of the British Empire.

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Therefore, Art. 2 provided, with regard to equal treatment of flags, public works, regulation of police, customs, sanitary measures, and services on the waterway, two groups: (1) waterways for which there were international Commissions with nonriparian representation, and also waterways which might later be placed in this category whether by unilateral action of States, or agreements between the States concerned, and (2) other waterways of international concern.

3. General Provisions.[1] Other general Articles declared that former treaties and agreements were not abrogated by the Convention, although States signatory to this Convention agreed not to apply provisions of former agreements which were contrary to the Convention. The contracting States were not to grant noncontracting States treatment that would not be legal under the Statute if granted between contracting States. The Statute did not require the withdrawal of existing facilities which were greater than those called for by the Statute, provided that such facilities were extended equally to all the contracting States. The Statute also did not prevent the grant of such greater facilities later. There is an Additional Protocol, which provides for the reciprocal extension of free navigation, under conditions defined in it, to national waterways. This was the result of a compromise between those who wanted a broad definition of international rivers and those who wanted an intensive international organization of the main waterways of international concern.

4. Application of the Convention.[2] One of the main obstacles to the conference had been the trouble between Belgium and the Netherlands on the question of public

1. Specific provisions will be discussed in Section VIII.
2. Although great efforts had been made to take into account the wishes of Latin America, none of these nations except Chile ratified.

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works. Both countries signed the Convention, Belgium ratified it but the Netherlands did not, because, as in the case of the treaty,[1] there was considerable opposition to it. Switzerland, for reasons never clearly apparent, did not sign. Poland and Yugoslavia voted in favor of the Convention but when they saw that the Convention was not going to be generally accepted by western Europe, they abstained from further action. Under these conditions, the Convention did not apply fully either to the Rhine or the Danube. Although its legal sphere remained restricted, its influence, as an authoritative restatement of the principles of Vienna, has been large.

D. The River Statutes: Rhine, Danube, Elbe, Oder

1. The Need for Detailed River Statutes. While Barcelona emphasized the desirability of making freedom of navigation world-wide, the practical work of the river commissions showed that the problem of inland waterways is pre-eminently regional. At the time of the Peace Conference too much attention was devoted to general questions of the international regime at the expense of specific problems of organization. Individual river commissions were to administer the waterways, but when it came to defining their mode of decision and their powers, they were not endowed with the organization for, or the means of performing such a task.

The discussions at Barcelona emphasized the growing importance of technical questions, particularly those of public works. The need for giving a commission adequate powers of binding decision to deal with these matters was

1. See Section III B 2.

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recognized. But the attempt to remedy the deficiencies of the Peace Treaties proved too late to be very successful.

2. The Rhine. Negotiations for revision of the Rhine Statute proved as lengthy as those that followed the Congress of Vienna. Under normal conditions they would have led, by 1939, to a restatement of the Vienna principles on a realistic basis and in a more profound manner than that of the Barcelona Convention. However, lack of agreement with the Netherlands seriously hampered the negotiations,[1] and, when agreement was finally reached among the other States represented on the Central Commission, it took the shape of a draft Modus Vivendi. This document clearly shows that appeasement had marred the situation in fundamental respects.[2]

3. The Danube. The Danube Statute was completed in 1921. In an effort to preserve the special organization at the river mouth, concessions concerning the fluvial Danube were made, mainly to Rumania and Yugoslavia. The interests of international organization on the upper river were sacrificed where necessary in order to maintain the European Commission in its former state. For most of the Danube system the result was a rather weak and vacillating organization.

4. The Elbe. The Elbe presented a different problem. When the Statute was drawn up, the Danube-Oder Canal and the link with the Elbe Canal were merely plans with little practical importance, and the link between the Rhine and the Elbe was still far from completion. The only immediate international interest, therefore, was that of land-locked

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1. This difficulty was ironed out by 1939, see the Franco-Belgo-Dutch agreement of that year, Section IV e.
2. See Section IV D 1.

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Czechoslovakia. In virtue of Art. 363, the establishment of a special free zone in Hamburg was a matter for special negotiation between Germany and Czechoslovakia. The scope of the river Statute was actually limited in substance to problems of direct transit to and from Hamburg. The Elbe Statute clearly shows the limited character of the problem at the time.

5. The Oder. In the discussions preceding the Peace Treaties, both Poland and Czechoslovakia considered the Oder as the most rational means of transport between Upper Silesia and Moravia, and the Baltic. Their interest depended chiefly on the projected extension of the navigable waterway to the eastern part of the Upper Silesian basin and Ostrava. Poland, however, lost interest in the Oder as a means of transport, and concentrated on railroad development. As a result, she objected to the jurisdiction of the International Oder Commission over the Polish part of the Warta and the Netze. Her objection was overruled by the Permanent Court of International Justice.[1] In subsequent negotiations, Poland's efforts coincided with those of Germany in minimizing the role of the Commission and brought about a deadlock. It lasted until general deterioration of the political situation resulted in the suspension of efforts towards the conclusion of an Oder Act of Navigation.

6. Danzig. Art. 104 of the Versailles Treaty outlined the steps by which a "free and secure" outlet to the Baltic was to be given to Poland through the Free City of Danzig.[2]

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1. See Section III A 1 footnote.
2. The status of Danzig was finally clarified by the Permanent Court of International Justice. It was declared to be a sovereign State, however, much of its sovereignty might be limited on behalf of Poland. This view was accepted by the Council of the League of Nations.

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The actual settlement of Polish-Danzig relations, however, was made by the Treaty signed in Paris, 9 November 1920,[1] several provisions of which differed materially from those in the Versailles Treaty. In addition, the Paris Treaty itself was modified, particularly with respect to the railways of the port, by decisions of the High Commissioner accepted by both parties.

7. Memel. In contrast with the status of Danzig, the Memel Territory was merely an autonomous part of Lithuania. Germany had ceded her sovereignty over Memel to the principal Allied and Associated Powers. Lithuania, however, assumed de facto authority over the territory in 1923. Unable to come to terms, the Powers brought the question of Memel before the Council of the League under Art. 11, Paragraph 2, of the Covenant. A committee composed of an American (Mr. Norman Davis) and two representatives of the Organization of Communications and Transit presented a report which was approved by the Council, and which served as the basis of the Memel Statute of 1924.[2]

E. Problem of German Representation on the River Commissions

1. The Rhine. In conformity with the tradition of the Mannheim Convention, the Peace Treaties provided for representation of the German riparian States on the river Commissions, but said nothing about the Reich. When the Central Commission met for the first time after the coming into force of the Peace Treaties, the German delegation presented full powers on behalf of the Reich and the riparian States collectively. This was not accepted. It was arranged, however, that, while the delegates represented

1. The special provisions of the Treaty dealing with the Danzig Port and Waterways Board will be discussed below.
2. The Provisions of the Memel Statute dealing with the Memel Harbor Board will be discussed below.

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the States individually, the Reich could also be represented by them collectively. Throughout the 1920's, there were, a participant from Prussia, one from Baden, one from Bavaria or Hessen alternately, and one from the Reich. The last represented the State, Bavaria or Hessen, not otherwise represented; the agent of the State not represented sat in as an expert.

2. The Danube

a. European Commission. Germany was not represented on the European Danube Commission during the 1920's.

b. International Danube Commission. The two German States on the Danube, Württemburg and Bavaria, were represented individually on the International Commission. However, an agreement of 26 June 1926 provided that these delegates also represented the Reich.

3. The Elbe. At the time of the Peace Treaties it was decided to have four German delegates on the Elbe Commission representing the five German riparian States, since it was considered that the interests of Mecklenburg and Anhalt were too small to justify a vote for each. The participant from the Reich acted on behalf of Mecklenburg and Anhalt.

4. The Oder. The representatives of Prussia also represented the Reich.

F. Problems of Occupation on the Rhine

1. Introduction. The Inter-Allied Rhineland High Commission was set up as the supreme civil representative of the Allied and Associated Powers in the Occupied Territories of Germany after the first World War by the Agreement of 28 June 1919, with power to issue ordinances for the maintenance, safety and requirements of the Allied and Associated forces. Art. 10 of the Agreement, which dealt with transport personnel and equipment, in effect

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maintained military control over the transport systems of the Occupied Territories. The Rhine came under the provisions of this general Article.

Using the power to issue ordinances, the High Commission produced a set of rules[1] early in 1920 which established a satisfactory regime for the area under its control. Ord. 17 was the first specifically affecting the international statute of navigation on the Rhine. It set up an Inter-Allied Navigation Commission, operating under the Supreme Commander with rather extensive powers. These included power to obtain adequate statistics, to make orders of requisition and enforce them when necessary, and to inflict penalties on German transport personnel for failure to obey orders. Also, all plans for works on the river to be carried out by Germany had to be submitted to the Navigation Commission, so that works which might be objectionable on military grounds could be brought to the attention of the High Commission. Art. 11 of the Ordinance declared that the Navigation Commission could take over all management on the waterways of the Occupied Territory, if a state of siege was proclaimed by the High Commission. This would have meant, in fact, the complete suppression of free navigation for Germany even in peacetime. Ord. 17 clearly pointed to a latent conflict between the High Commission and the Central Commission under the Mannheim Convention which continued to be valid. The conflict was brought out during 1921 when Great Britain, France, and Belgium undertook to enforce a decision of the Reparations Commission by occupying Düsseldorf, Duisburg, and Ruhrort.

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1. The first Ordinance, 10 January 1920, defined the relative status of each of the legal systems: laws by the Commission, by the military forces, and German law. In general, German private law was retained except where it was contrary to the maintenance and safety of the Allied forces in the area.

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The sanctions applied as a result in 1921, however, were of too short duration to produce protests of violation of the Mannheim Convention.

2. Ruhr Crisis. In 1923, the problem of reparations again became acute. By a majority vote of Belgium, France, and Italy, the Reparations Commission decided that Germany had voluntarily defaulted in the performance of her obligations. The High Commissioners of France and Belgium were instructed by their Governments to bring sanctions of a nature similar to those which had been decided upon and enforced in 1921 into operation in the Rhineland. The High Commissioner of Great Britain was instructed to abstain. Italy sent a representative to the seat of the High Commission who was instructed to act in cooperation with the High Commissioners of France and Belgium. At the same time the French and Belgian armies under the Supreme Commander occupied the industrial Ruhr basin and other German territories outside those covered by the Agreement of June 1919. The ordinances and decisions of the High Commission did not apply as such outside these limits, but, in fact, identical orders were issued by the military authorities.

A new customs regime was set up by Ords. 133-136 on 18 January and 20 January 1923. Since the chief purpose of the customs regulations was to earmark customs receipts for reparations payments, all customs receipts in the Occupied Territories were carried in a special account for payment to the Allies, and goods could leave bonded warehouses in the Occupied Territories only on immediate payment of duties. Since all German services had refused to function, they had to be immediately replaced by inter-Allied organs. By means of customs barriers, the

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whole occupied area ultimately became a separate unit, although the fiction of customs unity with Germany was maintained for a while.

Under the new system, the normal German tariff continued at first to be enforced for import and export over all frontiers of Germany, including the western border of the Occupied Territories. Transit traffic across all of Germany remained free. The basic change was the customs boundary drawn between the Occupied Territories and the rest of Germany. Although no tariffs were applied at the beginning, a strictly controlled permit system had been established for all goods crossing this boundary, which, as it was used after January 1923, practically stopped all direct trade across the border between the Occupied Territories and nonoccupied Germany. Permits were granted freely for transit traffic between foreign countries, and for traffic between the Occupied Territories and foreign countries, in transit across nonoccupied Germany. Goods entering or leaving the Occupied Territories by way of the Rhine were, of course, subject to all these provisions.

All duties payable on goods entering or leaving the Occupied territories by way of the western frontier or the Rhine were collected by the Inter-Allied authorities. In addition, they were frequently collected a second time by the German authorities. This happened especially on the Rhine, where goods frequently passed through occupied Rhine ports on the way to and from nonoccupied Germany. Moreover, the free port system of the Rhine was infringed by the demand for payment of import duties at the frontier for all non-German goods going into any part of Germany. The principle of equal facilities also was impaired by the levy of export duties in free ports on goods coming

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from nonoccupied Germany destined for other European countries. As a result, export via the Rhine was less favorably treated than export via, for example, Hamburg. In practice, there was a double levy on goods passing across the western frontier, which further infringed the international regime on the waterway. Ord. 157, providing for the production of documents in the Occupied Territories to prove that the duty had already been paid, alleviated the system of double levies on imports to some extent.

Later on, the occupation authorities took steps to prevent the retention in nonoccupied Germany of goods that had been granted permits for transit through Germany to a foreign country, such as Czechoslovakia, by collecting the German export duties at the eastern border of the Occupied Territories. This reintroduced the problem of the double levy, and emphasized again the conflict between rigorous control of goods and money passing in and out of the Occupied Territories and the international system. A partial levy on goods coming into the Occupied Territories from nonoccupied Germany was then established as a reprisal against both German seizure of goods coming out of the Occupied Territories and German levy of a second customs payment on goods imported and exported by the Occupied Territories.

Shortly afterwards, levy of the import duties at the frontier was suppressed, but the new system, which demanded payment at Düsseldorf on all goods coming upstream and destined for points above Düsseldorf, and for all goods coming downstream at Ludwigshafen, was again in violation of the Convention. Other violations resulted from the fact that, in certain instances, the duties levied on imports via the Rhine were higher than those levied on the

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same goods in nonoccupied Germany. There were still other violations concerning customs tariffs. Transit through Germany was subjected to restriction and formalities such as deposits or guarantees which were prohibited by the Mannheim Convention.. Not only a lack of adequate customs personnel, but also suppression of the facilities implied in the existence of free ports resulted in a breakdown of facilities required by the Convention in all ports. The military authorities went even further in forcing all vessels to have their manifests stamped at Duisburg, prohibiting navigation at night, and similar restrictions.

There were several ordinances dealing with navigation on the waterways of the Occupied Territories that cut even more directly across the Central Commission's authority. The most important of these was Ord. 159, which provided for a special temporary licensing by the military Navigation Commission for masters of vessels. All German masters, on French vessels as well as on German ones, were out on strike, and the measure was really imperative. However, it constituted an encroachment upon the rights of the Central Commission, as well as an infraction of the Convention of Mannheim. The Central Commission finally passed an illegal regulation providing for such licensing, in order to preserve the form of legality, and the Ordinance itself was modified somewhat to bring it into line with the new regulation.

- Ord. 197 provided that goods might not be deposited near the navigable waterway outside those places which, before 11 January 1923, habitually served as ports. The excuse was that explosives were being transported secretly, and that it was essential to keep the wharves free for military purposes. Actually, the High Commission simply

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could not hold enough people to do the work, and this Ordinance was in the nature of a cover-up measure. It represented a real infringement on the unrestricted use of facilities.

It became increasingly evident that, short of removing the Occupied Territories completely from the German customs area, there was no way to prevent serious violations of the Rhine international regime. Therefore, further Ordinances were passed in an attempt to bring the rules passed by Allied authorities into agreement with the Mannheim Convention, which in effect made the Occupied Territories into a foreign country. A new Inter-Allied customs regime now replaced the old system; it was applied to all import and export by the Occupied Territories. The principle of freedom of transit was reestablished for all transit traffic through the Occupied Territories. Pressure from the Central Commission, particularly after discussions in the December 1923 session, influenced the adoption of the new system. Further concessions were made in the customs regime as the result of pressure from the Central Commission. However, adequate transit facilities were not granted until March 1924 and even then the system of free ports had not been re-established in full.

3. End of System. German passive resistance had broken down in November 1923. Agreement between Germany and the creditor Powers was not reached, however, until August 1924, when the Dawes plan came into force. At this time, Ord. 262 dissolved the permit and registration fee system, Ord. 265 dissolved the customs boundary on the East, and the whole territory was reincorporated into the German customs regime. The Ordinances dealing directly

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with navigation were also cancelled.

G. Negotiations for Revision of the Rhine and Maritime Danube Statutes, and Elaboration of the Oder Statute

1. The Rhine. Negotiations for revision of the Rhine Statute, as provided for in the Versailles treaty, continued throughout the 1920's. No agreement was reached, however, until 1936, when a Modus Vivendi was initiated.[1] It was followed by the 1939 Agreement between France, Belgium and the Netherlands.[2]

2. The Danube. The dispute between the European Danube Commission and Rumania over the Commission's powers between Galati and Brăila led to considerable discussion in the Organization for Communications and Transit (OCT). A Committee of Conciliation was organized by the OCT to deal with the problem. The dispute itself was finally referred to the Permanent Court of International Justice for an advisory opinion, but before the Court made any decision, the OCT Committee brought about agreement between Rumania and the other Powers on the Commission. This new arrangement was an attempt to improve the judicial organization, and both the legitimate resentment of Rumania concerning the curtailment of her sovereignty, and the need for judicial guarantees for persons prosecuted for infractions of police regulations were taken into account. The first was settled by substituting for the former judicial system one evolved from the principles of Vienna.

a. Courts. Rumanian Navigation Tribunals were to deal with all infractions of police regulations. A special Navigation Court served as the appellate court for the Navigation Tribunals, and its decisions were final. The

1. See Section IV D 1.
2. See Section IV E.

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head of the Rumanian Government agreed to represent all the contracting parties, and decisions were to be given in his name. The jurisdiction of the Courts, unlike that under the Rhine system, was limited to penal matters. There was no alternative court of appeal.

b. Personal Guarantees. Equal treatment for all nationalities in the courts was declared. Persons brought before the court were to conduct their own cases or to choose the person to do so, free of any restraint. Documents were to be drawn up on unstamped paper. Judgments were given after a public hearing to which the accused was duly summoned.

c. Stationaries. The naval craft of the Powers stationed in the lower Danube were to be removed.

Although agreement was almost completed, France, Great Britain, and Italy chose to conclude with Rumania a Modus Vivendi that left unsolved the problems between Galati and Brăila. As a result, the arrangement was never adopted.

3. The Oder. When the way was cleared through the decision of the Court in the case of the Oder affluents,[1] negotiations did not proceed as favorably as had been hoped. The points of view of Germany and Poland on the one hand, and of Czechoslovakia and the nonriparian States on the other proved irreconcilable.

H. The Organization for Communications and Transit for the League of Nations

1. Introduction. The Provisional Committee for Communications and Transit of the League of Nations drew up the draft Statute of an Organization for Communication and Transit (OCT). The final text was established in

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1. See Section III D 5.

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1921 by the General Conference and given the form, not of an international agreement, but of Rules and Regulations which would be put into effect by a resolution of the Assembly, and which could be modified by a two-thirds majority resolution of the Conference.

The resolutions of the Assembly of 8-9 December 1920 had laid down the basic principles for such an organization. The interior working of the organization was to be independent. Its relations with the League and the Members[1] of the League were to be controlled by the League, to which it was subordinate. Objections made at the time by Canada and Australia, were directed not against the Organization for Communications and Transit as such, but against technical organizations in general, especially those for economic and financial matters. Their opposition was supported by some States of Eastern Europe, and this proved detrimental to the work of the Advisory and Technical Committee, which had been conceived as the governing body of a permanent organization.

In the final text, this permanent nature was not affirmed and the advisory and technical character of the Committee was deliberately underscored.

2. The 1927 Statute. The permanent nature of the Organization for Communications and Transit was, however, recognized in 1927, when the Rules were revised and the word "Statute" adopted. The Organization for Communications and Transit was to facilitate international cooperation in the field of communications and transit, and also in the field of electric power, insofar as it related to communications and transit. The Organization was composed of all

1. In this report "Member", with initial letter capitalized means a member State of the League or of the OCT and never refers to a person, (except in the case of British India, all the Members of the League or of the OCT were States), while "member" with initial letter in lower case means the individual representing a State and sitting on the Committee or on one of its permanent or temporary committees.

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Members of the League, and of States admitted to participation in the technical organizations of the League by resolution of the Assembly, or to the OCT by resolution of the general Conference. The main organs of the OCT were the General Conference, the Advisory and Technical Committee, and the Secretariat.

a. Conferences. General Conferences were to be convened at any time, either by decision of the Council, or at the request of half the members of the OCT. In addition, a General Conference would be convened once every four years. The delegations of the Members of the OCT were to take part as of right, as well as delegations of any Government invited by the Council to take part in the Conference. If possible, delegations were to be provided with full powers to sign any Convention adopted by the Conference. Persons and organizations other than the foregoing might be invited by the Committee, the Council, or the Conference, to take part in an advisory capacity in the work of the Conference. Decisions were taken by majority vote, a majority of the delegations being present. The final text was approved by a two-thirds majority of those present.

Limited Conferences, including only States especially affected, were convened by the Council on the proposal of the Committee. The procedure was the same as that in General Conferences. European Conferences became increasingly frequent, stressing the regional approach to problems of communication and transit.

b. Advisory and Technical Committee. The Advisory and Technical Committee, intended as a body that would meet frequently and take effective action, became largely a clearing-house for the activities of its subordinate committees. Each Member of the League permanently repre-

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sented on the Council was entitled to one representative on the Advisory and Technical Committee. For the nomination of other members of the Committee, Members of the League particularly interested in questions of communication and transit were to be chosen by the Conference, with technical interests and geographical representation taken into account. The total number of members of the Committee was not to exceed one-third of the Members of the League. Provision was made for rotation in representation on the Committee. The Committee was not a committee of representatives of States, although it differed from the usual pattern of advisory committees in the fact that its members were appointed by States . During tenure, they were not removable.

Specific provisions were made for the procedure of electing Members of the OCT empowered to appoint members of the Committee. The Statute also provided for the appointment of temporary members to the Committee for specific questions. In this case, and in the case of representatives present by special invitation, the State represented did not need to be a Member of the Organization.

c. Internal Organization of the Committee. In general, the internal organization of the Committee was decided by the Committee itself. Certain special provisions were made with regard to the Chairman, to the organization of permanent and temporary committees, and to cooperation with other organizations. Decisions of the Committee, and of permanent and temporary committees under it, were taken by a majority vote, the Chairman having a casting vote.

The permanent committees especially provided for in the Statute were the Committees on Air Navigation, Electric Power, Transport by Rail, Inland Navigation, Maritime Ports and Navigation, and Road Traffic, and the Legal Committee.

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The Committee could set up other permanent committees that it thought necessary.

d. Disputes. The procedure of the Committee with regard to disputes was dealt with in considerable detail. Upon a request for action on questions falling within the competence of the Committee, the interested States were invited to submit information and make observations. If no satisfactory reply was received, the Committee, enlarged by temporary members from States not regularly represented who were parties to the dispute and wanted representation, began an investigation. The procedure of the investigation was governed by the decision of the Committee, which might entrust it to any of the permanent committees, or to a special committee composed of members of the permanent and temporary committees, or even of other persons, r to a formal Committee of Enquiry made up in the same way. If a settlement was made following this preliminary investigation, its terms were drawn up in a procès-verbal. If no settlement was made, the Committee was entitled to give an opinion and make recommendations. Such an opinion was valid when a majority of the members of the Committee participated in the voting.

e. Secretariat. According to the resolution of 8 December 1920, the Secretariat of the Organization was to be provided by the Secretary General of the League. A special section was created to fulfill this assignment.

3. International Cooperation. The river commissions were independent of the League of Nations. However, they were invited to send representatives to all meetings of the Committee for Communications and Transit. In practice, only the Rhine Commission was normally represented by its Secretary-General. Reciprocally, the Organization was

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frequently represented during this period at the meetings of the river commissions. In addition, there was an exchange of all documents between the river commissions and the Organization, including the confidential minutes of the river commissions.

The authority of the League of Nations over Memel was exercised through the Organization of Communications and Transit. The authority of the League over the Port of Danzig was exclusively exercised through the Council and the High Commissioner. In practice, however, disputes between Poland and Danzig concerning matters of communication and transit were frequently dealt with by permanent committees of the OCT or individual members of these committees chosen for this purpose by the High Commissioner of Danzig, or by the Council of the League.

4. Activities of the OCT. Apart from the General Conventions, the OCT prepared many special conventions. As far as inland navigation is concerned, they covered the following subjects: the measurement of inland navigation craft, the unification of transport statistics, the registration of inland navigation craft, the right of these vessels to fly a flag, the unification of certain rules of private law concerning mortgages (hypothèques), and similar matters. In all these matters, the initiative came from the Central Commission.

As a further result of this cooperation, between the Organization and that Commission, an attempt was made to unify certain matters of labor law, hours of work, and conflicts of law in such matters of social legislation as social insurance. A Mixed Committee composed of representatives of the OCT and the International Labor Organization was appointed by the Governing Board of the latter. After

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a promising beginning, the work of this Committee was indefinitely suspended at the instigation of some of the employer representatives on the Board.

The Committee as such reported on disputes concerning the affluents of the Oder, the jurisdiction of the European Danube Commission, and the representation of Germany on the International Danube Commission.

During this period the OCT gradually regained the ground lost in 1920. Its functions in the preparation of treaties and agreements diminished somehwat, and liaison through members of the Secretariat grew in importance. Coordination activities among the various modes of transportation increased, and inland transportation problems came to be dealt with more and more by the Organization on a regional basis.

I. Internationalization of Projected Canal Links Between Waterway Systems

1. Rhine-Danube Canal. The question of internationalizing the future link between the Rhine and the Danube waterway systems was discussed at length during the Peace Conference. The original plan was to provide for construction of the waterway by Germany on the demand of the Allied and Associated Powers. If Germany failed to carry out all or part of the work, the Central Commission was to complete it. In any event, the Central Commission, enlarged by one representative of each of the Allied and Associated Powers represented on the International Danube Commission but not represented on the Rhine,[1] was to distribute the initial cost of construction and to administer the canal when completed.

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1. This meant Czechoslovakia, Yugoslavia, and Rumania

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However, France feared that such a regime might be injurious to the interests of Strasbourg. She objected that "such a derogation from the traditional principles of law" exceeded the obligations which might be "legitimately imposed on the enemy". As a result, Art. 353, adopted 9 June 1919, of the Treaty of Versailles simply declared that the Rhine-Danube waterway, when completed, was to be subject to an international regime, no international organization being provided. Obviously, the best solution was a link between the Rhine and the Danube via the Main. This, in effect, was the solution that prevailed, and that has been partially carried out. As there existed, however, alternative plans for such a link via the Neckar, the upper limit of internationalization on the Danube was fixed by the Peace Treaties at Ulm in Württemberg to avoid a possible hiatus in the international regime.

2. Elbe-Oder-Danube Canal. During the discussions at the Peace Conference, Czechoslovakia declared[1] that she would apply such international principles as were established in the general convention to an Oder-Danube Canal, which would naturally also connect with the Elbe. The commitment is found in the Czechoslovakian draft reply to the Austrian delegation.[2] The draft reply stated that "the Czechoslovak State will always be ready to allow a regime of complete freedom of navigation on that waterway". In the discussion following the reading of this reply, Mr. Benez, the Czechoslovakian delegate said, "It is understood that as soon as the Canal shall have been constructed by the Czechoslovak State, the regime provided for the Rhine-Danube Canal will be applied to it."

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1. This was binding under the provision for unilateral declaration in the Barcelona Statute which she ratified.
2. Minutes of the 42nd Meeting of the Commission on the International Regime of Ports, Waterways, Railways, 9 August 1919.

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It had been assumed that Czechoslovakia would put the canal under the jurisdiction of the Elbe Commission. However, the Reply of the Allied and Associated Powers to the Observations of the German Delegation on the Conditions of Peace of 9 June 1919 says: "It should be noted in this connection that the Czechoslovak State declares itself prepared to place under the administration of the International Commission for the Oder a certain number of canals to be constructed subsequently, to extend this system of waterways across its territory". There is, then, some question as to which Commission would have exercised jurisdiction. Perhaps it was intended to extend each of the jurisdictions of the Oder Commission, the Elbe Commission, and the International Danube Commission over that part of the canal system leading from the respective rivers to the junction of the three branches of the canal at Prerau.

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IV. BREAKDOWN OF INTERNATIONAL ORGANIZATION

A. The Consequences of the Economic Crisis; New Problems; Impact on the International Statutes

1. Introduction. Economic difficulties in the early 1930's led to a condition verging on bankruptcy for inland navigation. The natural efforts of each individual shipowner to keep his vessel or vessels in operation by getting as much as possible of the available freight simply depressed freight rates further. Lack of a sound proportion between ship tonnage and cargoes was the basic difficulty.

2. Germany in General. To meet this situation, a decree passed in Germany on 23 December 1931 (Dritter Teil Bekampfung der Notlage der Binnenschiffahrt) authorized the Reich Government, in agreement with the Länder, to take measures of an economic nature, particularly with regard to balancing available cargoes against cargo space. These measures enabled the Government to compel the carriers to participate in associations which were public corporations to limit the utilization of their vessels and fleet, and to prevent any increase in the fleet. They also enabled the Government to provide for determining the maximum and minimum remuneration for navigational activities, and to regulate the repartition of cargoes.

A decree of the Reichsverkehrsministerium was passed on 25 July 1932 (supplemented on 21 June 1933), which permitted the annulment of existing freight allocation contracts in order to arrive at equal distribution of cargoes and towage operations among small shipowners.

3. The Elbe. The general Order of 23 December 1931 was followed by Orders of the Reichsverkehrsministerium on 23 March 1932 and 10 June 1932. Schifferbetriebsverbände (Ship Operators' Associations) were formed for the

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Elbe, the waterways between the Elbe and the Oder, and the Oder. As a rule, members were those who acted as common carriers of goods and who did not possess more than three vessels. Frachtenausschüsse (Rate Boards) were created for the same waterways, to determine maximum and minimum rates and the distribution of cargoes under the supervision in Saxony of the Saxon Ministry of Economics, in Hamburg of a Deputation from the Senate, etc.

Cooperation among the shipping companies on the Elbe started with spontaneous associations formed to secure, by contracts with the Betriebsverbände, their promise to take no goods or undertake no towage except through the association, in return for guarantees of an adequate share in river operations. By June 1932, this movement had attracted all but one company. The Elbe Association was forcibly completed by the Order of 10 June 1932, applicable to all German carriers on the Elbe above Hamburg and on the Havel who did not fulfill the conditions for members of Betriebsverbände: in other words, those who possessed more than three ships. These were formed into a Vereinigung (association) for upstream traffic, one for downstream traffic, and one for traffic between the Elbe and the Havel. In accordance with the Order of 25 July 1932, all contracts for hire or performance between companies and small shipowners were annulled. The members of the Vereinigung were the contracting parties to the contracts annexed to the law, and these contracts became law for all others falling under the above definition. Agreements made by the Vereinigung and passed by a two-thirds majority were obligatory for members. Traffic was divided into three groups for the course of the river

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and receipts were pooled and distributed on a fixed basis. For the group whose traffic extended to Czechoslovakia, for example, the basis for distribution was the net receipts of 1929-1931. New construction was forbidden to all groups. The Agreement stipulated that earnings from profitable as well as marginal transactions should be distributed among the participating members. Small shipowners were guaranteed a fixed rate as compensation, and a compensation system was also set up within the Kleinschiffervorbände. The average traffic secured during the years taken as a base was decisive in determining distribution.

The Order of 10 June 1932 was contested before the German Courts on the grounds that it was incompatible with Art. 13 of the Elbe Statute. The Hamburg Landericht rejected this contention, saying that the Elbe Statute did not apply to the relationship between State and citizen. The court declared that compulsory association of German common carriers was not a prejudice but an advantage for the foreigner. Even if competition with the association should drive the foreigner out of the market, this would not constitute a discrimination within the meaning of the Act.

In February 1934, the system was extended as one union over all Elbe traffic, including even traffic below Hamburg, and traffic on the Kiel Canal (Kaiser Wilhelm Canal). Small shipowners and the shippers were not included. The Führer principle of the National Socialists was added to the organization, which became a component of the corporative system that embraced the transport industry. Thus, the former organs became advisory bodies under one-man control at the peak of the organization. Though the new system was strongly tinctured with political consider-

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ations, the leader (Leiter) was usually an individual with considerable practical experience in inland shipping.

4. The Oder. The Orders of 23 March 1932 and 10 June 1932 that established the Schifferbetriebsverbände also applied to the Oder. No compulsory association of companies outside the Betriebsverbände was undertaken. A system of fixed rates was also instituted to meet the economic crisis.

5. The Rhine

a. Germany. Measures were badly needed on the Rhine to protect skippers against foreclosure of mortgages, and to enable them to meet insurance premiums. The small owners of the Rhine demanded Government assistance. The navigation companies, however, were largely against forcible government action. They felt that no action would be effective unless foreign companies could be persuaded to cooperate. Government action could not insure this cooperation. However, they did feel that the Government should protect them from undue railway competition, excessive salaries, and social burdens and heavy taxation.

No attempts were made to apply the Elbe system to the Rhine. A system of rotation was established by spontaneous cooperation among the small shipowners. A proposal to limit by law the carrying capacity of vessels was eventually presented to the cnetral Commission. Germany hoped that the Commission would accept the principle and leave its application to the individual States. The Commission, however, while approving the principle, was unwilling to forego control over its application. As a result, Germany rejected the agreement drawn up in the

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Commission, and nothing further was done.

After 1933, association of all German shipowners became compulsory on the Rhine also. Problems of traffic on the Rhine were gradually overshadowed by the repercussions of increasing Government control over export and import. For example, the exportation of German coal to the Netherlands, Belgium, and France via the Rhine became the subject matter of barter agreements in which, among other things, the share of the national fleets of the States concerned was determined.

b. The Netherlands. The Netherlands passed a law on 5 May 1933, instituting a system similar to that of the Frachtenausschüsse. It was limited to traffic between national ports, and to those Chamber of Industry and Commerce districts where Frieght Allocation Commissions, composed of three members appointed by the Chamber, had been established. These Commissions could refuse approval of a freight allocation agreement. Loading, unloading, and the carriage of goods could be carried on only under an approved agreement. Courts of appeal were appointed by the Government for the settlement of disputes. This law did not apply, however, to traffic between ports situated on the Rhine or at its mouth. Nevertheless, it exerted some influence on Rhine traffic.

c. Belgium, France, and Switzerland. No similar action was taken concerning the Rhine fleets of Belgium, France, or Switzerland.

6. Danube. The situation on the Danube was different. Except on the Lower Danube, there were few, if any, small shipowners. The large companies on the Upper Danube -- The First Danube Steamship Co. (DDSG -- Austrian), the Royal Hungarian River and Sea Shipping Co. (MFTR -- Hungarian), and the South German Danube Steamship Co. (SDG --

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German) -- signed an agreement in 1926 for joint utilization of their combined means of operation. This was enlarged in 1927 by inclusion of the Bavarian Lloyd Co., and a still closer relationsip was reached in 1928 by the formation of the Betriebsgemeinschaft der Donauschiffahrten (Working Association of Danube Shipping Companies). Beside the joint utilization of vessels, this agreement also provided for the pooling of dock and transshipment installations, warehouses and storehouses. The large shipping companies on the Lower Danube, except for the Rumanian ones, also had a price-fixing agreement for years.

The decline of freight rates to a point below cost consolidated existing associations, and led to the establishment of new ones for the determination of freight rates. By 1933, these associations had been grouped into three pools: tankers, cereal carriers and carriers of other products. Each pool operated under freight-allocation agreements.

B. German Representation on the River Commissions

1. Introduction. The Law of 30 January 1934 and the Order of 2 February 1934 allowed the Reich to assume the sovereign powers of the German States in all matters concerning representation on the river Commissions.

2. The Rhine. After 1934 delegates on the Rhine Commission represented the Reich and the States collectively. Germany voluntarily cut her representation to three by failing to appoint a fourth delegate. Reservations were made by the States represented on the Commission, but in practice the new powers of the German representatives were tolerated.

3. The Danube. The delegates of the two German riparian States on the Danube disappeared, and two delegates

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of the Reich with full powers were sent to the International Danube Commission in 1934. The legitimacy of this was contested. For lack of a quorum, no decision could be taken at the time. The German representatives were allowed to take their places by virtue of a special agreement until a decision should be reached. This arrangement was limited to six months, and negotiations for a permanent arrangement were begun immediately. The States argued that there was now only one German riparian State on the Danube, the Reich, and that clearly the accepted principle for the International Commission was that of one representative for each State. Germany, on the other hand, claimed that she was entitled to two representatives under the Peace Treaties and the Danube Statute of 1921, and that a change in her internal organization did not affect her international rights. Furthermore, she argued, some of the same Powers had agreed to leave her representation unchanged on the other river Commissions.

The Commission was unable to find a solution and Great Britain and France brought the dispute before the OCT. Germany, which had withdrawn from the Organization, made the necessary replies to the Advisory and Technical Committee's request for information, but tacitly refused to cooperate by failing to send a representative to the meetings of the Committee. Under these circumstances, the OCT decided that the dispute could not be settled by conciliation. No further steps were taken and, as part of the general denunciation of the Versailles river provisions, Germany left the Commission in 1936. With the disappearance of Austria in 1938 and Czechoslovakia in 1939 as independent States, their representation also ceased.

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4. The Elbe. After 1934 German delegates represented the Reich and the riparian States collectively on the Elbe Commission. Here, as on the Rhine, one member was regularly not appointed.

C. Breakdown of the Organization for Communications and Transit.

1. Weakening of the OCT. Events in the 1930's paved the way for encroachments upon the autonomy of the Organization for Communications and Transit by the Council and the Secretary General of the League of Nations. In 1935, an attempt drastically to curtail the OCT was made. This met with determined opposition. A Committee was appointed by the League Assembly at that time to make a general survey of the technical organizations. This Committee proposed that the Committee of the OCT become a governmental committee, with each State appointing its own representatives, and with a small body of experts chosen by the Council to deal with current affairs. The Assembly requested the Council to apply this new plan to the OCT. The Council then drew up a group of general regulations embodying uniform principles for all technical committees.

In the meantime, however, the Advisory and Technical Committee had constituted a strong Special Committee to deal with the matter, if and when the Council should be willing to consult it. This suggestion could hardly be rejected. The Council expected the Special Committee to draft regulations for the Advisory Technical Committee in its new shape which would have implemented the general regulations. The Special Committee, however, stated that, in view of the quasi-judicial powers given the OCT by a series of treaties, its organization could not be substantially altered. In particular, if the Advisory and

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Technical Committee became a body appointed and modified by the Council at will, treaty provisions in virtue of which it might be called upon to play a part in the settlement of disputes might be held inapplicable. The Council referred this report to the Assembly, which, in 1937, reversed its previous decision and instructed the Special Committee to prepare a revised version of the statute of the OCT. The new draft was to be submitted, however, to the Council for approval.

The revised Statute of 1938 represents a compromise between the centralizing tendencies of the League Secretariat and the resistance of the technical interests of the Organization for Communications and Transit. The only question on which there was real disagreement in the Committee was that of representation on the Committee with regard to permanent Members. The situation differed from that existing in 1921, when Belgium and the Netherlands had been alone in wanting no permanent representation on the Committee: only France now insisted on permanency. She could not be persuaded to change her stand, and the Council decided to maintain the previous system on that point. On other points the Special Committee's draft Statute was accepted.

2. Revision of the Statute in 1938. The legislative body of the Organization for Communications and Transit had formerly been a General Conference meeting periodically. For reasons of retrenchment, this was now replaced by the League Assembly, which in practice took over all its functions. The Assembly admitted nonmember States to the work of the Organization. It elected the Members of the Organization who were to form the Committee for Communications and Transit, and admitted nonmember States to the Council for

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the purpose of making appointments to the Committee (see next paragraph). It exercised special powers over the Organization, and checked on its activities every three years. It also approved or disapproved the decision of a State withdrawing from the League to remain in the OCT. It was responsible for the revision of the Statute.

Other important changes were made. The first Article was expanded in the 1938 Statute to include public works as a field in which the OCT would facilitate international cooperation. The individual members of the Committee were no longer appointed exclusively by the States, but by the Council in agreement with each State. The title "Advisory and Technical Committee" became simply "Committee". It was stated, however, that this did not imply any alteration in the character of its function.

The new Statute made special provisions concerning continued membership on the Committee of such States as Poland, indefinitely re-eligible to the Council of the League of Nations. An acknowledgment of regional arrangements among the Scandinavian States and the States of the Petite Entente, among each of which one seat on the Council was rotated, and among Belgium, Luxembourg, the Netherlands, and Switzerland, among which two seats on the Committee were rotated constituted no innovation.

Art. 7 listed the specific powers of the Committee. This was, likewise, a codification of the recognized practices of the Committee, and contained no new powers.

D. Effect of Appeasement Policies on the Rhine, Elbe and Maritime Danube Commissions

1. Rhine Modus Vivendi. The rise of the National Socialists in Germany forced some changes in the character of the revision of the Rhine Statute. European policy

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at that time was to meet German demands wherever possible in order to avoid a situation which might lead to war. The position of Belgium, France and Great Britain on the Rhine was further weakened by the attitude now assumed by Italy and by their inability to reach an agreement with the Netherlands. To obviate the latter, in view of Germany's attitude and professed determination to come to terms before the end of the year, temporary arrangement, the Modus Vivendi of 1936, was resorted to, in which the Netherlands took no part. Some of the Articles of the Modus Vivendi show a substantial limitation of the Commission's powers and of the principle of free navigation.

Probably the most significant change in the Rhine system was the suppression of the jurisdiction of the Commission on appeals in civil, administrative, and penal cases. Another important change was made with regard to disputes among States. The new provisions weakened the established means of dealing with disputes. Germany's attitude now systematically favored bilateral agreements against multilateral ones, arbitration against adjudication, and was hostile to the League of Nations. Therefore, the former method of reference to the OCT and then to the Permanent Court of International Justice was no longer acceptable to her. She insisted that an alternate method be written into the Act. As a result there was provision for an arbitral tribunal, to be used on agreement of the States concerned, or when one party to the dispute was not a Member of the League of Nations. In any case, reference of the dispute to the OCT was no longer compulsory, even if it eventually went to the Permanent Court of International Justice.[1] There were

1. See Section IX for discussion of judicial procedure.

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other changes. The general rule concerning double taxation was not incorporated into the Convention. Instead, the question was to be dealt with in bilateral agreements between the States. Exemptions from customs duties and similar charges on articles necessary to the operation of a vessel, such as fuel, provisions, and spare parts, became entirely inadequate, and would have subjected navigation to real inconvenience. Customs enclosures were to be the subject of a separate Convention. For all practical purposes, telecommunications and the post, insofar as they were used in connection with navigation, were withdrawn from the sphere of the international regime on the Rhine.

Certain other provisions actually limited the effectiveness of the international regime, but they cannot be attributed to German demands alone. One was the Article allowing a State to limit temporarily application of the international regime during periods of emergency, provided that they maintained free navigation and equality of treatment "as far as possible". The dangers inherent in this provision became apparent in the Lithuanian Railway case, where the Permanent Court of International Justice gave a very broad interpretation of the same clause in the Statute annexed to the General Convention on Freedom of Transit. Another provision was the one dealing with the Secretariat, for which no statutory arrangements were made in the Modus Vivendi while texts previously adopted adequately provided for the requirements of international administration on the Rhine.

The Modus Vivendi, initialled in the spring of 1936 provided for its signature within six months. On the last day of this term, Germany suddenly withdrew from the river commissions.

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2. Elbe Modus Vivendi. Nazi Germany extorted from the other States represented on the International Elbe Commission a drastic revision of the Elbe Statute and a Modus Vivendi which would have come into operation on 1 January 1937, but for her decision to repudiate the Elbe Conventions, together with the river provisions of the Treaty of Versailles.

3. European Danube Commission. After the admission of Germany to the League of Nations, her claim to be reinstated on the European Danube Commission was acknowledged by the Great Powers, although reluctantly by some. Determined opposition from Rumania, however, prevented Germany's reinstatement. Rumania's relations with the European Danube Commission had not been satisfactory throughout the period after World War I. She had consistently tried to reduce the Commission's powers. She now demanded and obtained concessions drastically curtailing these powers as the price of Germany's admission to that body. As the negotiations concerning the problem of the jurisdiction of the Commission between Galati and Brăila had shown, the Powers were on the whole willing to make all reasonable concessions to Rumania; for example, they willingly gave up the right to have warships stationed on the Lower Danube. Rumania's demands went far, however, and the Powers failed to take a strong enough stand to prevent a complete breakdown of the Commission's powers. Most of the direct functions of the Commission with regard to such matters as navigation works, regulations, judicial powers, sanitation, and administration were transferred to an autonomous body working under the supervision of Rumania: the Maritime Danube Board. The installations and part of the personnel of the European

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Commission were transferred to the Board. Many of the non-Rumanian personnel were replaced by Rumanian nationals. The duties of the Commission were now limited primarily to the supervision of Rumanian authorities. They were in a way more limited than those of the International Danube Commission.[1] Whenever the European Commission acted upon a majority vote, the majority had to include Rumania. In this form, the Commission remained active until several months after the outbreak of World War II.

E. Franco-Belgo-Dutch Agreement of 1939

The failure of the Rhine Modus Vivendi, and Germany's denunciation of the Rhine provisions of the Treaty of Versailles and of the Mannheim Convention made it obvious that a settlement had to be found for the problems concerning French, Belgian and Dutch interests. Belgium was ready to agree that the Rhine Statute should be applied to the Belgian ports of Antwerp and Ghent, and to the Belgian part of the waterways leading to them, on the same conditions that it was applied to Amsterdam and Rotterdam. This was worthless, however, unless the Netherlands made concessions in regard to the intermediary waterways. The Netherlands still insisted that she must have satisfaction from France on the supertax, before she would undertake further negotiations with Belgium. As discussions progressed among the three countries, it was found necessary to deal not only with the supertax, but also with the premiums which Belgium was giving to navigation to and from the Rhine, and again with the broader questions of port charges and pilotage dues.

1. As the Permanent Court of International Justice pointed out, the European Commission had never exercised supervision inside the Rumanian ports.

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The Franco-Belgo-Dutch Agreement of 1939 showed real progress in the solution of the long-standing difficulties between the Netherlands and Belgium. One important question, however, still remained unsolved: that of public works. The Netherlands was still unwilling to make concessions on this matter, and it was left upon for further negotiations.

F. Developments During World War II

1. The Danube[1]

a. From the Outbreak of War to August 1940. Upon the outbreak of war in Europe in September 1939, international control of Danube navigation was still exercised by the European Danube Commission and the International Danube Commission. During the first year of the war there was no major change in the organization or functions of this international control of the Danube. Both the International and the European Commission met during this period at regular intervals, at the usual time and place, and with their ordinary members as participants. In the case of the European Commission, this meant the meeting, in common conference, of delegates of powers at war with each other.[2] Behind this peaceful facade, however, the major powers began immediately to jockey for positions and influence.

1. Section F is taken from OSS, R&A No. 2667, The Danube River and its Control Since 1938, Washington, D.C., 20 January 1945, pp. 50-58, Confidential.

2. E.g., meeting of the International Commission at Belgrade April 1940, of the European Commission at Galati February and May 1940.

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This was the period of the short-lived Nazi-Soviet rapprochement. Germany and Russia had a common interest in the river and in excluding Western Powers from the area, but beyond this negative purpose, mutual jealousy and competition for influence appeared immediately. The Soviet Government during this period persistently demanded representation on the European Commission, but without success. Germany, on the other hand, tried above all to regain influence over the fluvial Danube.

Alleging British attempts to sabotage shipping on the Danube at the April 1940 meeting, the Reich, through Hungary, demanded a share in controlling and policing the fluvial Danube. A new committee, in which Germany would be represented and which would police important parts of the river, was suggested. This was rejected by the Commission in favor of a mixed Rumano-Yugoslav subcommission to supervise Danube policing particularly at the Iron Gates and the adoption of stringent security rules. These rules forbade navigation of heavy ships or boats easily convertible into warships, and provided for the limitation of the size of crews and control of their members. Later Germany -- again through Hungary -- suggested international (i.e., German-dominated) control of the strategic Iron Gates, but was again defeated through Rumanian and Yugoslav opposition.

b. The Vienna Conference and Its Results.[1]

By the summer of 1940, in spite of the unchanged existence

1. The details of the developments from this point on are somewhat uncertain, and available information is sometimes doubtful or contradictory, because the powers participating in the events tried to proceed cautiously, avoiding in many cases official announcement or publication of the texts of even the most important documents.

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of the two old Danube Commissions, the balance of power in the Danube region had completely changed. Navigation on the river had become almost exclusively a German affair. Russia became a riparian state by the incorporation of Bessarabia on 28 June 1940. The fall of France reduced the influence of the Western Powers in the region to almost nothing, while the influence of the Axis became predominant in most Danubian countries. The Reich, therefore, believed the moment propitious for the outright destruction of the existing legal system governing Danube affairs, and its replacement with what Haushofer called "Greater German river geopolitics."

According to an unconfirmed report, Germany and Italy, at the end of August 1940, announced their withdrawal from the European Commission, declaring it thereby dissolved. This step would seem to have been taken in preparation of the establishment, by the Axis powers, of an Axis-dominated single commission for all of the Danube, but was apparently dropped silently and temporarily in order not to provoke Russia, who wanted, not the abolition of that commission, but its reorganization with Russian participation.

Therefore, for the time being, attention was focused on the International Commission. On 2 September Berlin announced that the German Government had invited "the governments concerned" to send experts to a conference to be held at Vienna for the discussion of Danube questions. This announcement was coupled with the statement that in view of notorious enemy sabotage attempts on the Danube, British and French participation in the International Commission could no longer be tolerated. The Vienna conference was therefore expected to supply a "provisional

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new system." (It will be noted that the official communiqué avoided the issue of the river deltas.)

The conference met on 5 September, apparently with the participation of Italy, Hungary, Bulgaria, Yugoslavia, Rumania, and Slovakia. The Russians had not been invited. On 10 September, however, the Soviet Government informed the Reich that "the Soviet Union, being a Danubian state, cannot be indifferent to the control of Danubian shipping, and cannot but take an active interest in all questions concerning the Danube River. In view of this, the Soviet Government hopes to receive from the Reich Government all information regarding the Vienna conference of experts, insofar as it relates to international questions affecting the Danube."

The official communiqué on the termination of the conference stated that it had discussed "questions of Danube navigation above Brăila." The International Danube Commission was declared officially to be dissolved, and a provisional agreement, providing "measures for the liquidation of the International Danube Commission and the safeguarding of ... unrestricted navigation on this part of the Danube," was signed.

The text of the agreement itself has never been published. A leading article in a German newspaper, known at that time to reflect the views of the German Foreign Office, referred to it as "not a big treaty, but a provisional arrangement of only a few articles limited to the essential." The same article emphasized that the new arrangement did not touch the European Commission and questions concerning the Maritime Danube. Later reports asserted that the conference had established, in place of the International Commission, a "Consulting Committee for Danube Affairs

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above Brăila," under a permanent German director (Dr. Martius), and with representatives of Italy, Hungary, Bulgaria, Rumania, Yugoslavia, and Slovakia. A sub-committee, likewise under German chairmanship, was to control the Iron Gates, and both bodies could be convened and adjourned only by their German chiefs.

The Vienna conference thus seems to have resulted in the elimination of Franco-British influence over affairs of the fluvial Danube, and an attempt to replace it by Axis domination. It also implied recognition, at least on the part of such riparian states as were members of the International Commission and who were now either Axis satellites or at least under German influence, of the demise of that Commission and the legalization of Germany's absorption of Austria and Czechoslovakia, as well as the establishment of the puppet state of Slovakia as a "person in international law." While the ultimate intention probably was to establish the new organization as the sole body dealing with all Danube questions, including those of the Lower Danube, no open attempt was made to achieve this end immediately, in view of the expected Russian opposition.

c. Diplomatic Relations Between Russia and Germany. Subsequent to the Vienna conference diplomatic negotiations ensued between the Soviet Union and Germany in which agreement was reached upon the abolition of the International Commission, the major result of the September meeting. The Soviet-German agreement constituted a new decision; the Vienna proposal, to which Russia did not accede, was quietly dropped. But an even further step was taken, for this agreement also dissolved the European Danube Commission and established in place of the two former Commissions, a single body, on which Germany, Italy,

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Russia, Rumania, Hungary, Bulgaria, Yugoslavia, and Slovakia were represented and whose jurisdiction was to comprise the whole of the Danube. However, the river was considered as international only to Bratislava, thus excluding all parts of the river directly under German domination. The major positive result thus was the inclusion of the Soviet Union in the new set-up, to which the Axis powers had been forced to agree. Russian influence was extended beyond the Maritime Danube to the entire internationalized part of the river.

d. The Bucharest Conference and Its Failure. As a result of the German-Soviet negotiations a conference of representatives of the Soviet Union, Germany, Italy, and Rumania was planned toward the end of October 1940 in Bucharest for the discussion of questions concerning the Maritime Danube.[1] Whether this meeting was intended to be an international conference in the usual sense, or a meeting of a newly established Danube Commission is not clear.

While the agreement concluded after the Vienna conference between Russia and the Axis Powers signified their accord as to the formal organization of the new commission, there was apparently little accord as to the actual functioning and detailed regulation of the new river set-up. For this reason the Bucharest conference was convened to discuss what apparently amounted to the most important point of disagreement, namely the situation on the Maritime Danube. Russia is reported to have asked that control of the Danube mouths be conferred solely upon her and Rumania as riparian states. This request

1. The official communique on the Bucharest meeting, 1940, was as follows:
(footnote continued on following page)

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the Axis delegates were not ready to grant. Although nothing was ever officially made public as to the course and result of the Bucharest conference, it has become known that negotiations were protracted, and resulted in failure to reach any agreement. Shortly before Christmas 1940, the delegates left Bucharest, officially merely adjourning the conference until January. No agreement seems to have been reached between the time of the Bucharest Conference and the summer of 1941, when war broke out between the Axis and the Soviet Union.

In the meantime, one of the "forgotten" powers raised its voice in protest against the "reorganization" of international control on the Danube. In a note of 29 October 1940, the British Government interpreted Russia's participation in the new commission as a breach of neutrality, and declared that Britain would not recognize any agreements violating existing treaties, reserving all her rights in this connection. The Soviet Government

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(Footnote 1, continued from preceding page)

"As result of conversations which have been held recently between the German Government and the Government of the Soviet Union in agreement with the Italian Government, it has been found necessary to dissolve both the International Danube Commission and the European Danube Commission and to establish in their place a uniform Danube Commission composed of representatives of Germany, Italy, the Soviet Union, Rumania, Hungary, Bulgaria, Yugoslavia, and Slovakia. This Commission will have the task of regulating the question of navigation on the entire Danube from its mouth to Bratislava. In accordance with the agreement reached in this question, negotiations between expert delegates of Germany, Italy, the Soviet Union, and Rumania concerning a provisional regulation of the legal status of the Maritime Danube between the mouth and Brăila will begin at Bucharest on October 28."

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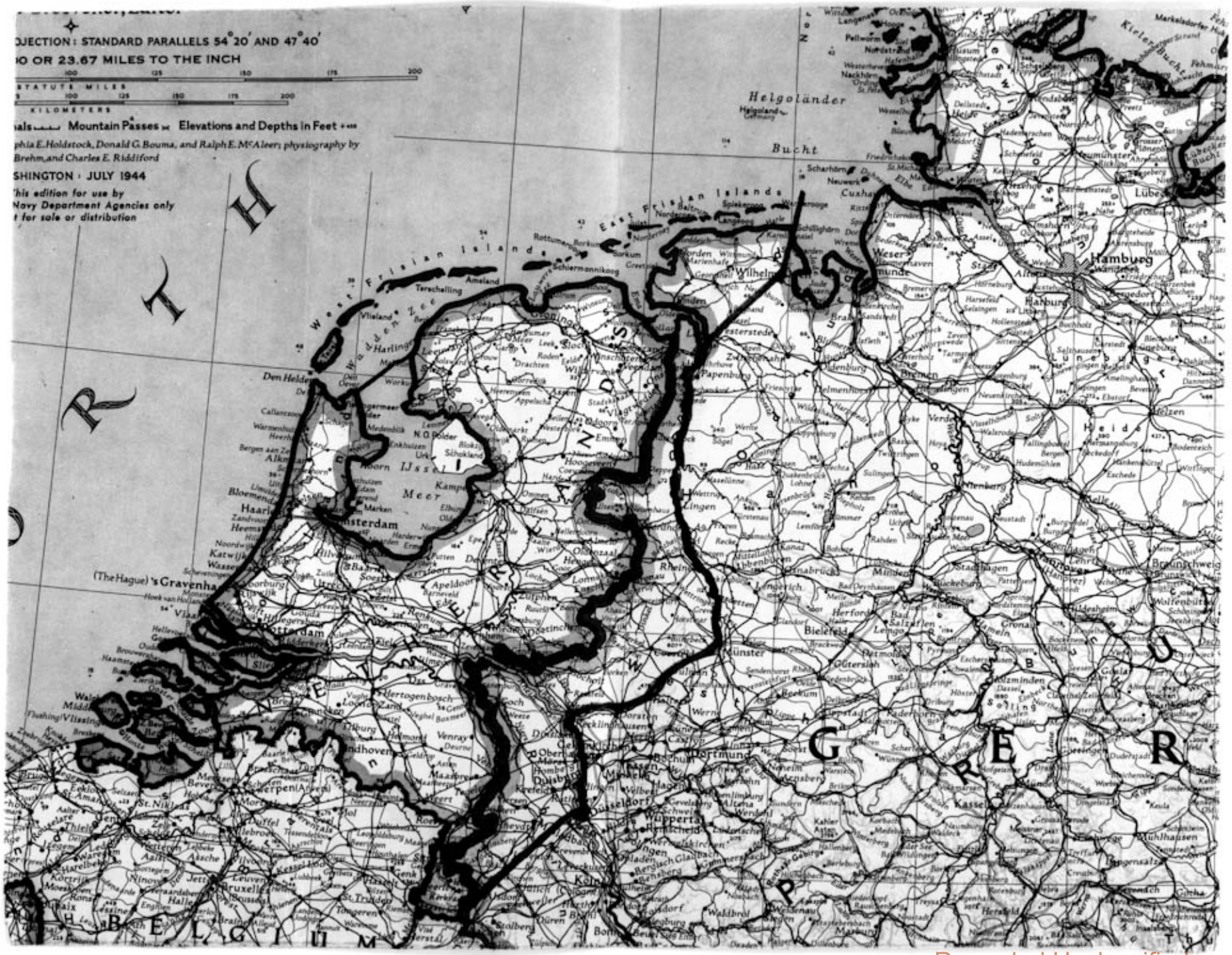
JECTION: STANDARD PARALLELS 54° 20′ AND 47° 40′
O OR 23.67 MILES TO THE INCH
STATUTE MILES
KILOMETERS
als Mountain Passes Elevations and Depths in Feet
phia E. Holdstock, Donald G. Bouma, and Ralph E. McAleer; physiography by
Brehm, and Charles E. Riddiford
SHINGTON : JULY 1944
his edition for use by
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t for sale or distribution
Helgoländer
Bucht
East Frisian Islands
West Frisian Islands
Terschelling
Ameland
Vlieland
Harlingen
Den Helder
Hamburg
Bremen
Hannover
Amsterdam
Haarlem
Rotterdam
(The Hague) 's Gravenhage
Utrecht
Arnhem
Nijmegen
Apeldoorn
Enschede
Hengelo
Deventer
Zwolle
Meppen
Lingen
Osnabrück
Münster
Bielefeld
Dortmund
Düsseldorf
Wuppertal
Essen
Duisburg
Krefeld
Köln
Aachen
Eindhoven
Tilburg
's-Hertogenbosch
Antwerpen (Anvers)
Bruxelles
Liège
Namur
Charleroi
Mons
Gent
Brugge
Oostende
Kortrijk
Ieper
Roeselare
Veurne
Duinkerke
Calais
Boulogne
Hazebrouck
Armentières
Lille
Roubaix
Tourcoing
Valenciennes
Maubeuge
Dinant
Givet
Sedan
Mézières
Rethel
Laon
Soissons
Compiègne
Beauvais
Amiens
Abbeville
Le Tréport
Dieppe
Rouen
Le Havre
Caen
Bayeux
Cherbourg
Saint-Lô
Coutances
Granville
Avranches
Fougères
Vitré
Laval
Mayenne
Alençon
Argentan
Falaise
Lisieux
Pont-l'Evêque
Honfleur
Evreux
Pont-Audemer
Bernay
Elbeuf
Louviers
Les Andelys
Vernon
Gisors
Pontoise
Saint-Germain-en-Laye
Versailles
Paris
Meaux
Provins
Nogent-sur-Seine
Troyes
Romilly-sur-Seine
Sézanne
Epernay
Reims
Châlons-sur-Marne
Vitry-le-François
Bar-le-Duc
Commercy
Saint-Mihiel
Verdun
Metz
Thionville
Longwy
Arlon
Bastogne
Neufchâteau
Saint-Dié
Epinal
Remiremont
Gérardmer
Colmar
Mulhouse
Belfort
Montbéliard
Besançon
Dole
Lons-le-Saunier
Dijon
Beaune
Chalon-sur-Saône
Autun
Le Creusot
Montceau-les-Mines
Nevers
Cosne-sur-Loire
Auxerre
Sens
Fontainebleau
Melun
Etampes
Dreux
Chartres
Châteaudun
Orléans
Montargis
Gien
Briare
Sancerre
Bourges
Vierzon
Issoudun
Châteauroux
Le Blanc
Argenton-sur-Creuse
Poitiers
Châtellerault
Loudun
Thouars
Parthenay
Niort
Saint-Maixent
Melle
Saint-Jean-d'Angély
Rochefort
La Rochelle
La Pallice
Marans
Fontenay-le-Comte
Les Sables-d'Olonne
Luçon
Challans
Saint-Gilles-Croix-de-Vie
Noirmoutier
Pornic
Paimbœuf
Saint-Nazaire
Guérande
Le Croisic
Redon
Vannes
Auray
Quiberon
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Pontivy
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Ploërmel
Josselin
Malestroit
Questembert
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La Roche-Bernard
Pontchâteau
Savenay
Blain
Châteaubriant
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Nantes
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Cholet
Saumur
Chinon
Loches
Tours
Amboise
Blois
Vendôme
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Saint-Calais
La Ferté-Bernard
Mamers
Sablé-sur-Sarthe
La Flèche
Baugé
Angers
Segré
Craon
Château-Gontier
Laval
Mayenne
Fougères
Vitré
Rennes
Saint-Malo
Dinard
Dinan
Lamballe
Saint-Brieuc
Paimpol
Tréguier
Lannion
Perros-Guirec
Morlaix
Roscoff
Landerneau
Brest
Le Conquet
Douarnenez
Audierne
Pont-Croix
Quimper
Concarneau
Pont-Aven
Quimperlé
Hennebont
Lorient
Port-Louis
Belle-Ile
Groix
Ouessant
Molène
Sein
Glénan
Penmarch
Pont-l'Abbé
Bénodet
Fouesnant
Carhaix-Plouguer
Châteauneuf-du-Faou
Huelgoat
Pleyben
Crozon
Camaret
Morgat
Plougastel-Daoulas
Saint-Pol-de-Léon
Roscoff
Carantec
Plouescat
Saint-Thégonnec
Guerlesquin
Plouaret
Lannion
Perros-Guirec
Trégastel
Plestin-les-Grèves
Lanvollon
Plouha
Binic
Etables-sur-Mer
Saint-Quay-Portrieux
Paimpol
Tréguier
Pleubian
Pleumeur-Bodou
Trébeurden
Ploumanac'h
Port-Blanc
Penvenan
Plougrescant
Pointe du Raz
Pointe du Van
Pointe de Penmarch
Pointe de Trévignon
Pointe de Talud
Pointe de Pen-Men
Pointe de Kerdonis
Pointe de Locmaria
Pointe de Kervoyal
Pointe de Kervilahouen
Pointe de Kervoyal
Pointe de Kervilahouen
Pointe de Kervoyal
Pointe de Kervilahouen

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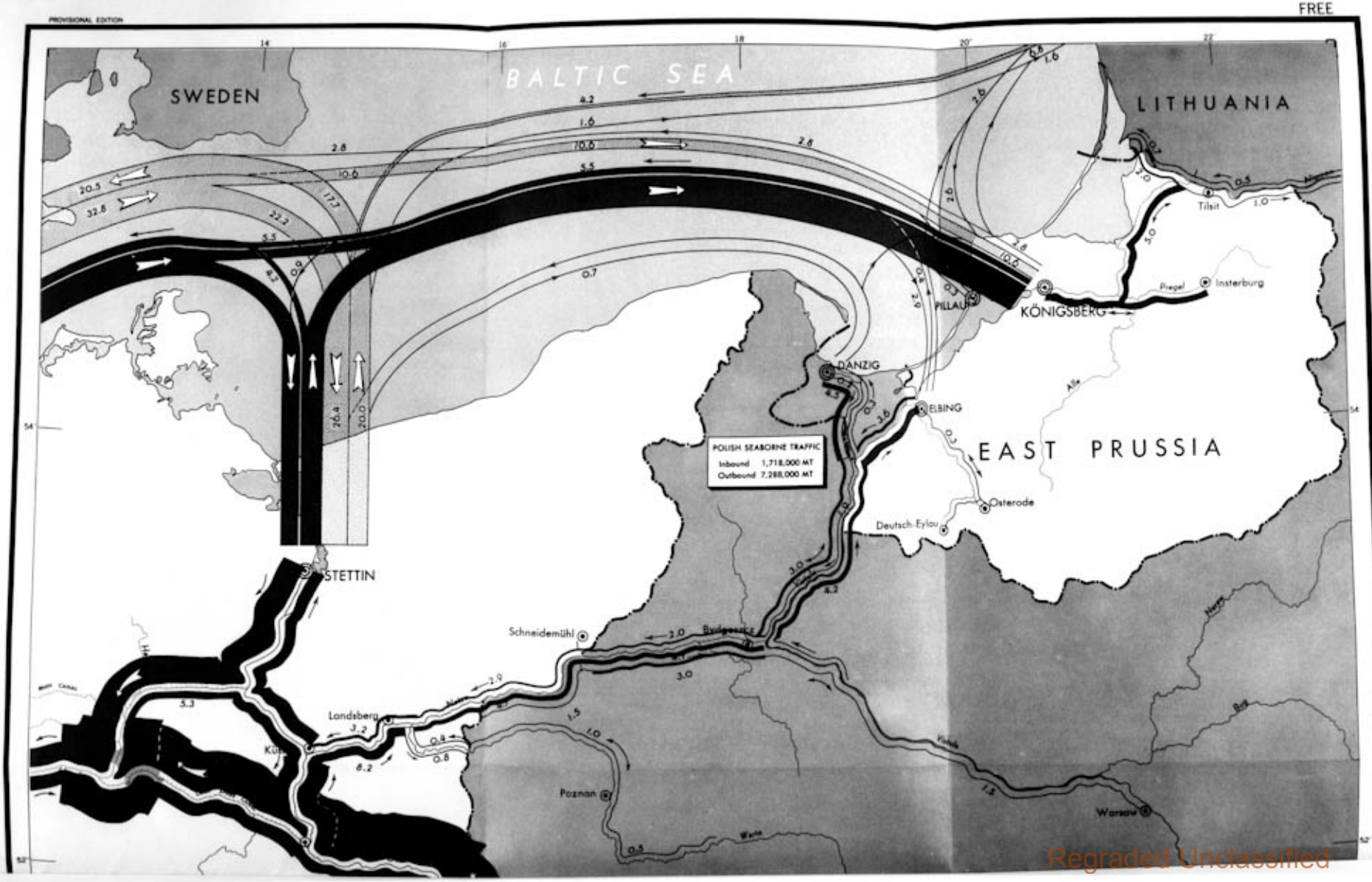

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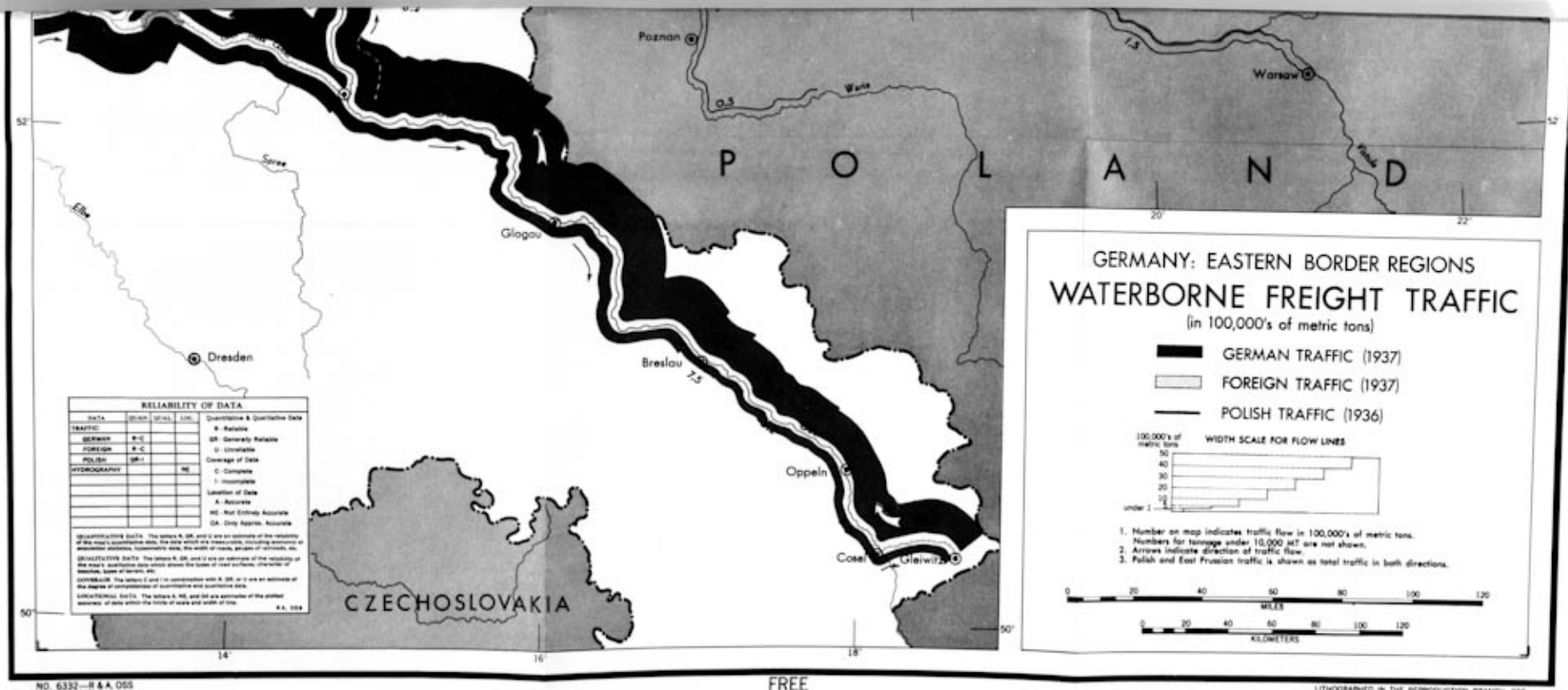

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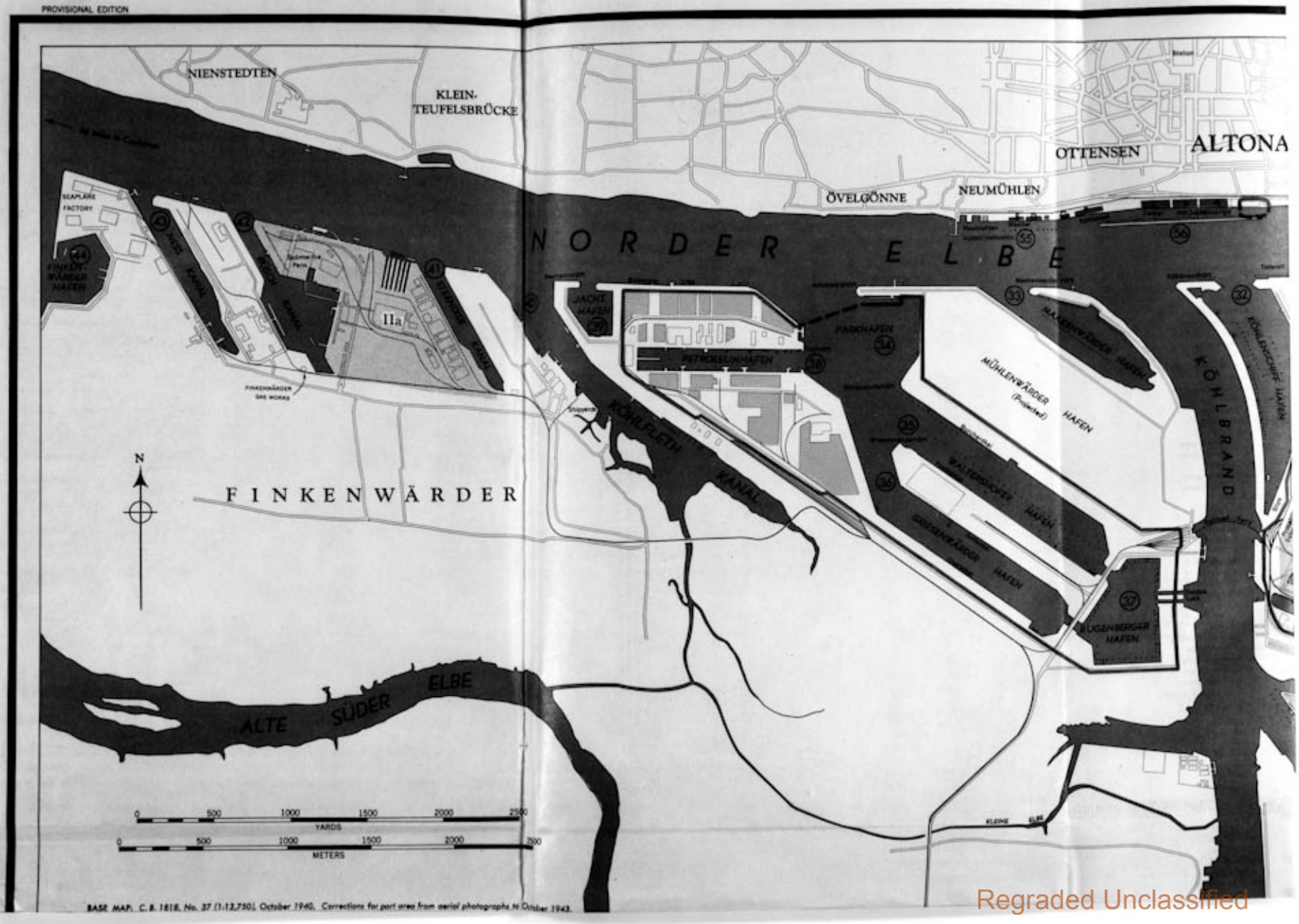

BASE MAP: C.B. 1818, No. 37 (1:12,750), October 1940. Corrections for part area from aerial photographs to October 1943.

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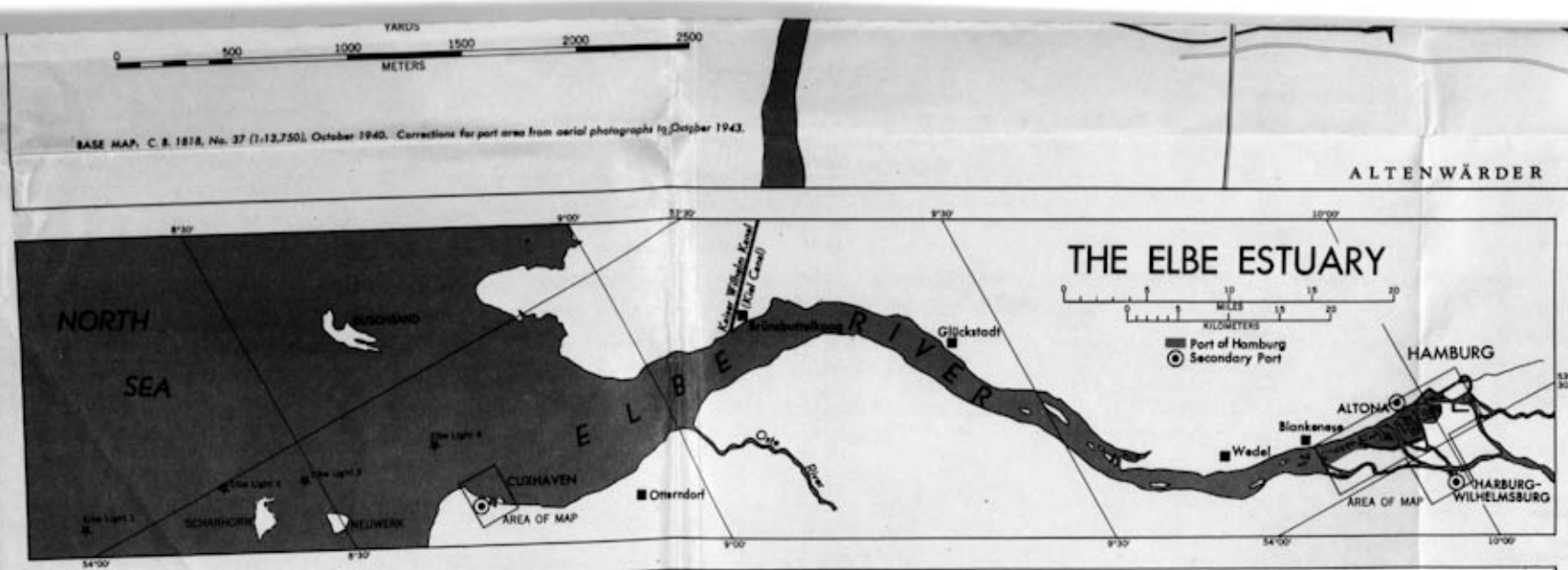

PORT OF HAMBURG

AND THE SECONDARY PORTS OF HARBURG-WILHELMSBURG, ALTONA AND CUXHAVEN

- WAREHOUSE
- BULK STORAGE
- COAL STORAGE
- GRAIN STORAGE
- DAMAGED OR DESTROYED
- RAILROAD
- OIL STORAGE
- TIMBER STORAGE
- COLD STORAGE
- SHIPYARD
- FREE PORT BOUNDARY (approximate)

3,8 WAREHOUSE
(3) BASIN OR QUAY
IV SHIPYARD

(Numbers refer to index on back of map.)

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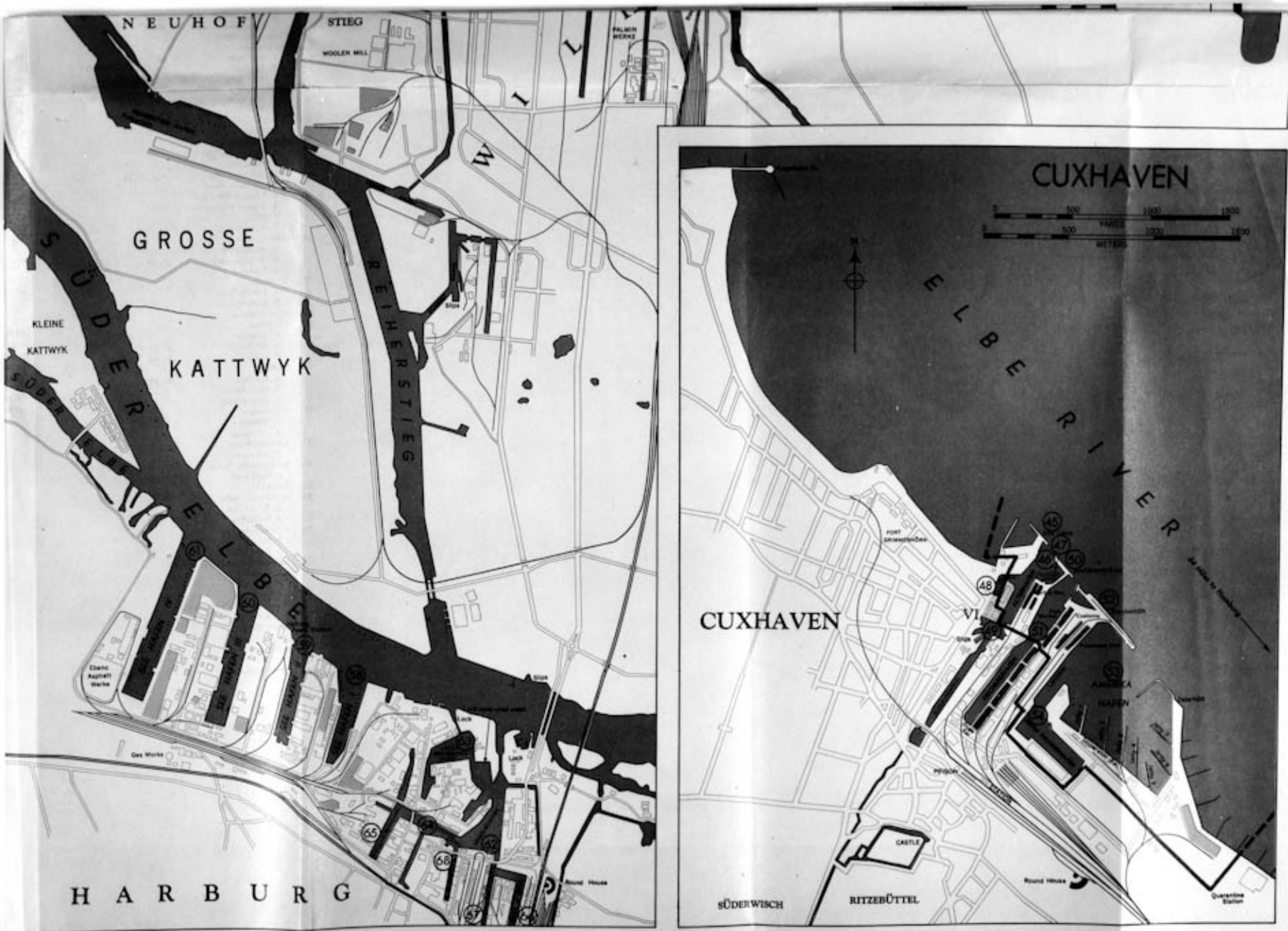

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LITHOGRAPHED IN THE REPRODUCTION BRANCH, OSS

B. Windhukkai 59
C. Kamerunkai 60-62

20. Klütjenfelder Hafen
21. Grenzkanal
A. East bank 64
B. West bank 54
C. West bank (south end)
22. Reiherstieg
A. East bank
B. West bank
23. Vorhafen
A. Fitting out quay
24. Kuhwärderhafen
A. Steinwärder Ufer
B. Mittel Ufer
C. Grevenhof Ufer A-F, 69, 70
25. Kaiser Wilhelm Hafen
A. Kaiser Wilhelm Hoft
B. Auguste Victoria Kai 71-73
C. Reiherkai
D. Kronprinzkai 74, 75
26. Ellerholzhafen
A. Ellerholzhöft
B. Mönckebergkai 76, 77
C. Kohlenkai
27. Travehafen
A. Roelofs Ufer
B. South side
28. Radewischhafen
29. Oderhafen
A. Oderhöft
B. Sthamerkai 80, 81
C. Chilekai 82, 83
30. Rosshafen
A. Rosskai 84, 85
B. Neuhöferkai
C. Hachmannkai
31. Vulkanhafen
A. Vulkankai
B. not named
32. Kohlenschiffhafen
A. not named
33. Moorkenwärder Hafen
A. South bank
34. Parkhafen
35. Waltershofer Hafen
A. Burchardkai
B. Predhöfkai
36. Griesenwärder Hafen
A. Saltenkai
B. Diestelkai
37. Rugenberger Hafen
38. Petroleumhafen
A. North side
B. South side
C. Bubendey und Parkhöft Ufer
39. Jacht Hafen
40. Kalflieth Kanal
41. Steendiek Kanal
42. Rusch Kanal
43. Ness Kanal
44. Finkenwärder Hafen

A. East side
B. West side
C. South side
59. Seehafen II
A. East side
B. West side
60. Seehafen III
A. West side
61. Seehafen IV (Petroleumhafen)
62. Verkehrshafen
63. Uberwinterungshafen
A. East side
B. South side
C. North side
64. Lothsekanal
A. South side
65. Ziegenwiesenkanal
A. East side
B. West side
66. Hafen Kanal
A. East side
B. West side
67. Ostlicherbahnhofskanal
A. East side
B. West side
68. Westlicherbahnhofskanal
A. East side
B. West side

MAJOR SHIPYARDS

I BLOHM UND VOSS
II-A DEUTSCHE WERFT (FINKENWARDER)
II-B DEUTSCHE WERFT (REIHERSTIEG)
III HOWALDSWERKE A.G.
IV H. C. STÜLCKEN UND SOHN
V NORDERWERFT (KÖSER UND MEYER)
VI NORDDEUTSCHE UNIONWERKE A.G.

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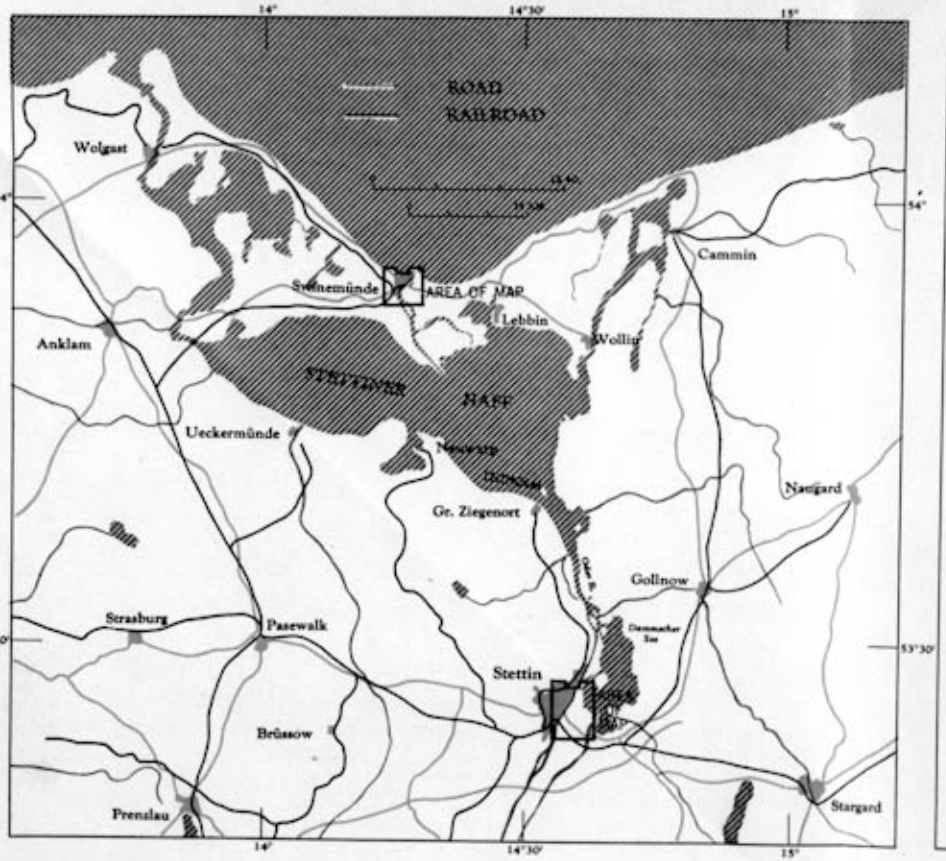

PORTS OF STETTIN AND SWINEMÜNDE

- IDENTIFIED BUILDING
- WAREHOUSE
- SHIPYARD
  Numbers refer to list on back of map.
- (6) BASIN OR QUAY
  Numbers refer to list on back of map.
- RAILROAD

NO. 5412-R & A, OSS
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INDEX TO NUMBERED BASINS AND SHIPYARDS

STETTIN

1. FREE PORT
   - a. Turning basin
   - b. West basin
   - c. East basin
2. DUNZIG KAI
3. REIHERWERDER HAFEN
4. INDUSTRIE HAFEN
5. OLD HARBOR
6. NEW QUAY (on north side of island northwest of Molln Wiese)

SWINEMÜNDE

East side of Swine River

7. OSTERNOTH HAFEN
8. OSTERNOTH HAFEN TO NAVAL DOCK BASIN
9. NAVAL DOCK BASIN TO SWINEMÜNDE-OSTSWINE FERRY
10. HOHENZOLLERN (RAILWAY) QUAY
11. RAILWAY QUAY TO WINTER-HAFEN
12. EICHSTADEN (east side)
13. KÖHLENHAFEN (coaling basin)
14. WINTERHAFEN

SHIPYARDS

AT STETTIN

I STETTINER ODER WERKE A.G.F. SCHIFF. U. MAS.
II STETTINER VULKAN WERKE
III GRIEFENWERFT G.m.b.H.
IV MERKURWERFT, G.m.b.H. (now ADMIRALTY DOCKYARD)

AT SWINEMÜNDE

V POMMERN YARD
VI SWINEMÜNDE HARBOR AUTHORITIES YARD
VII MAHR SHIPYARD

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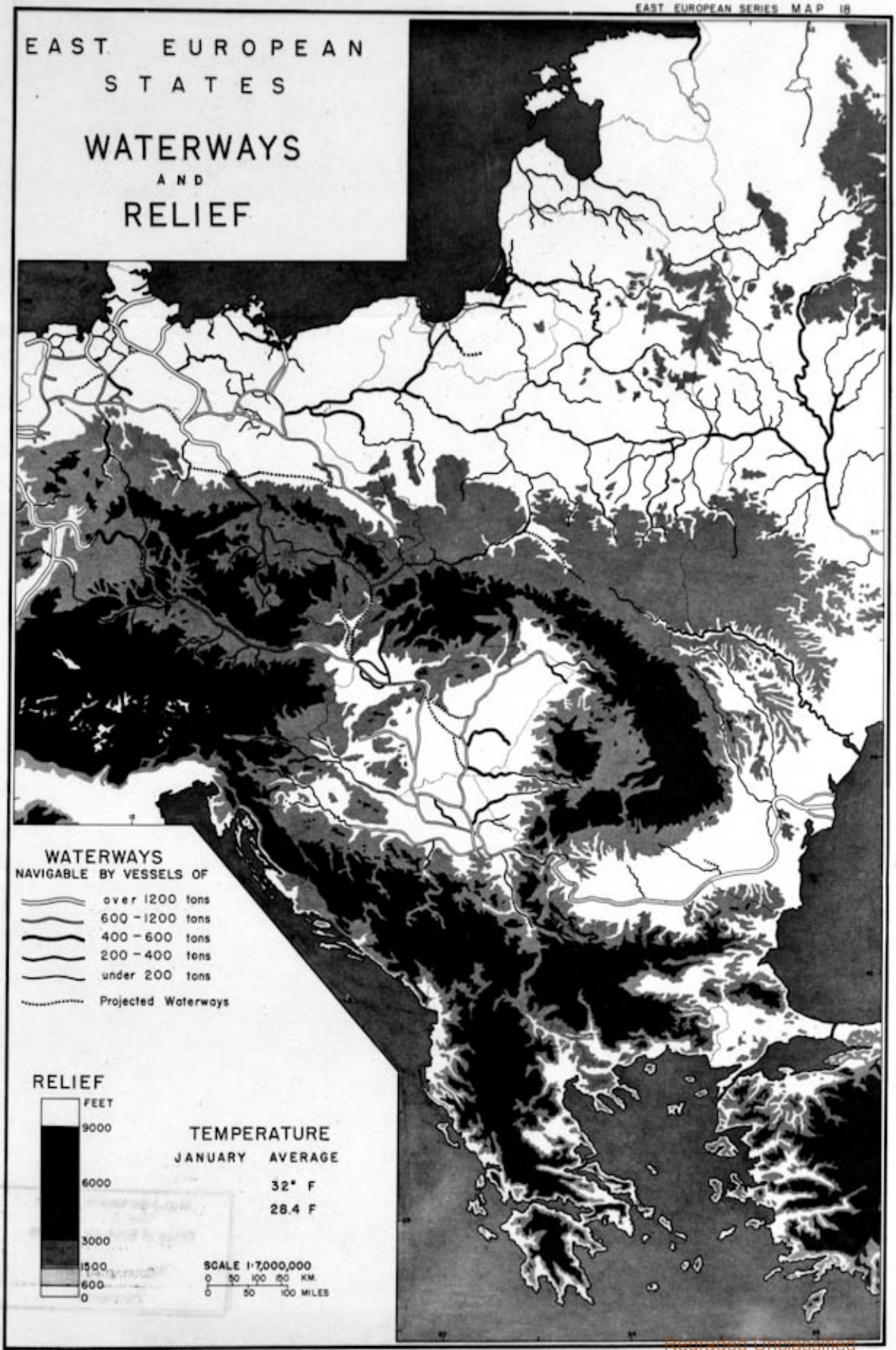
EAST EUROPEAN STATES

WATERWAYS AND RELIEF



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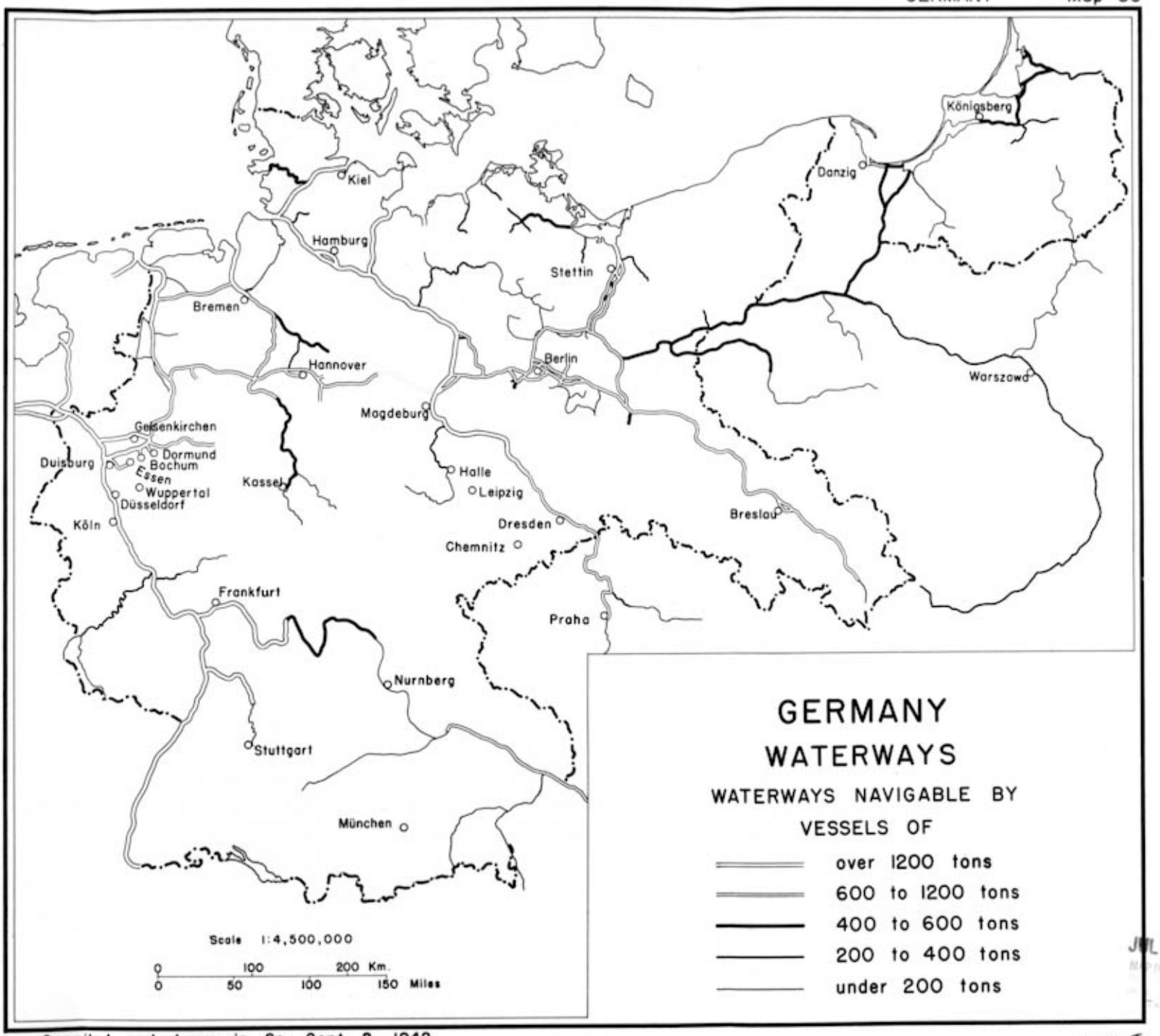

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PROVISIONAL EDITION

FREE

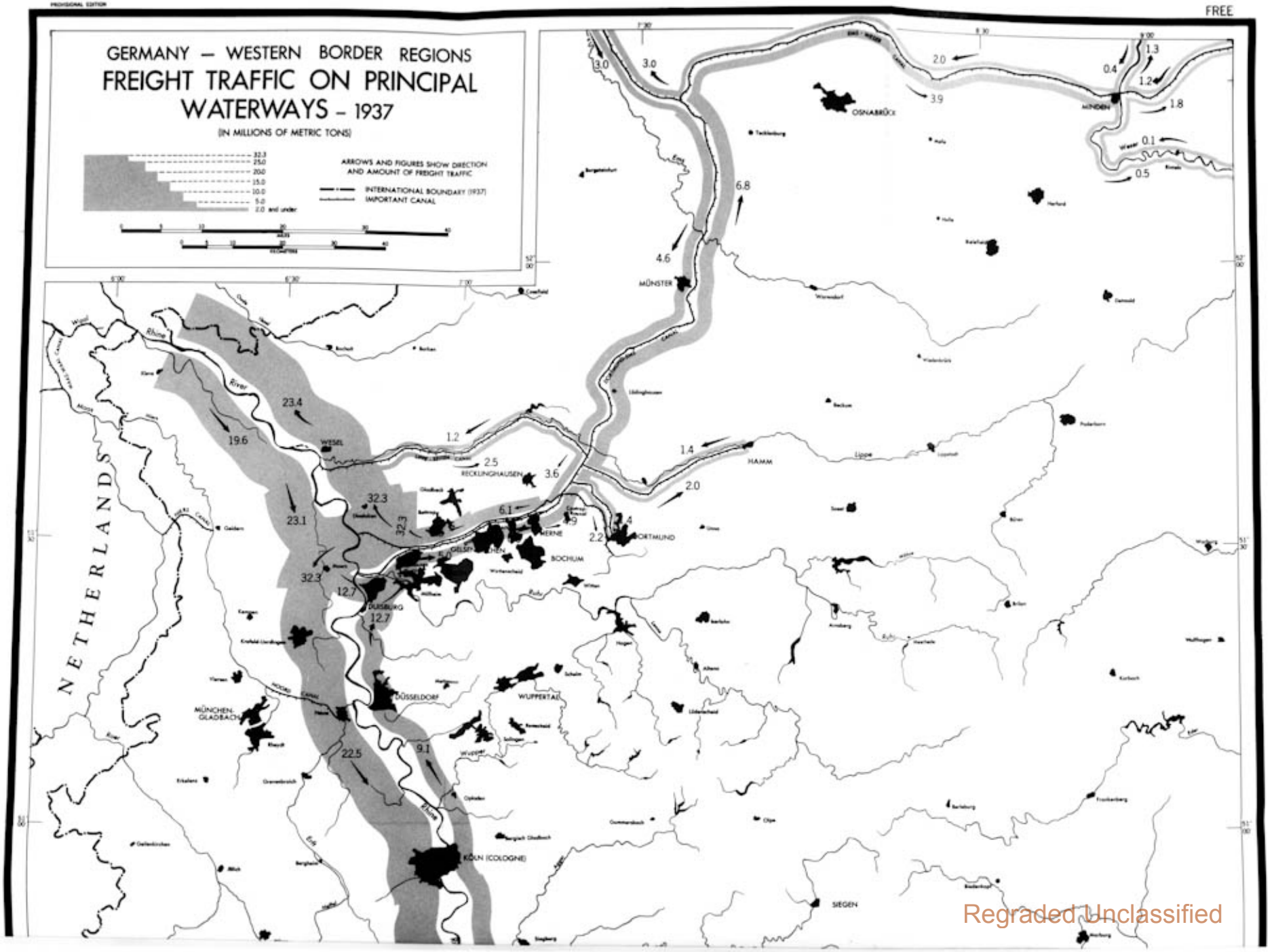
GERMANY — WESTERN BORDER REGIONS
FREIGHT TRAFFIC ON PRINCIPAL WATERWAYS – 1937

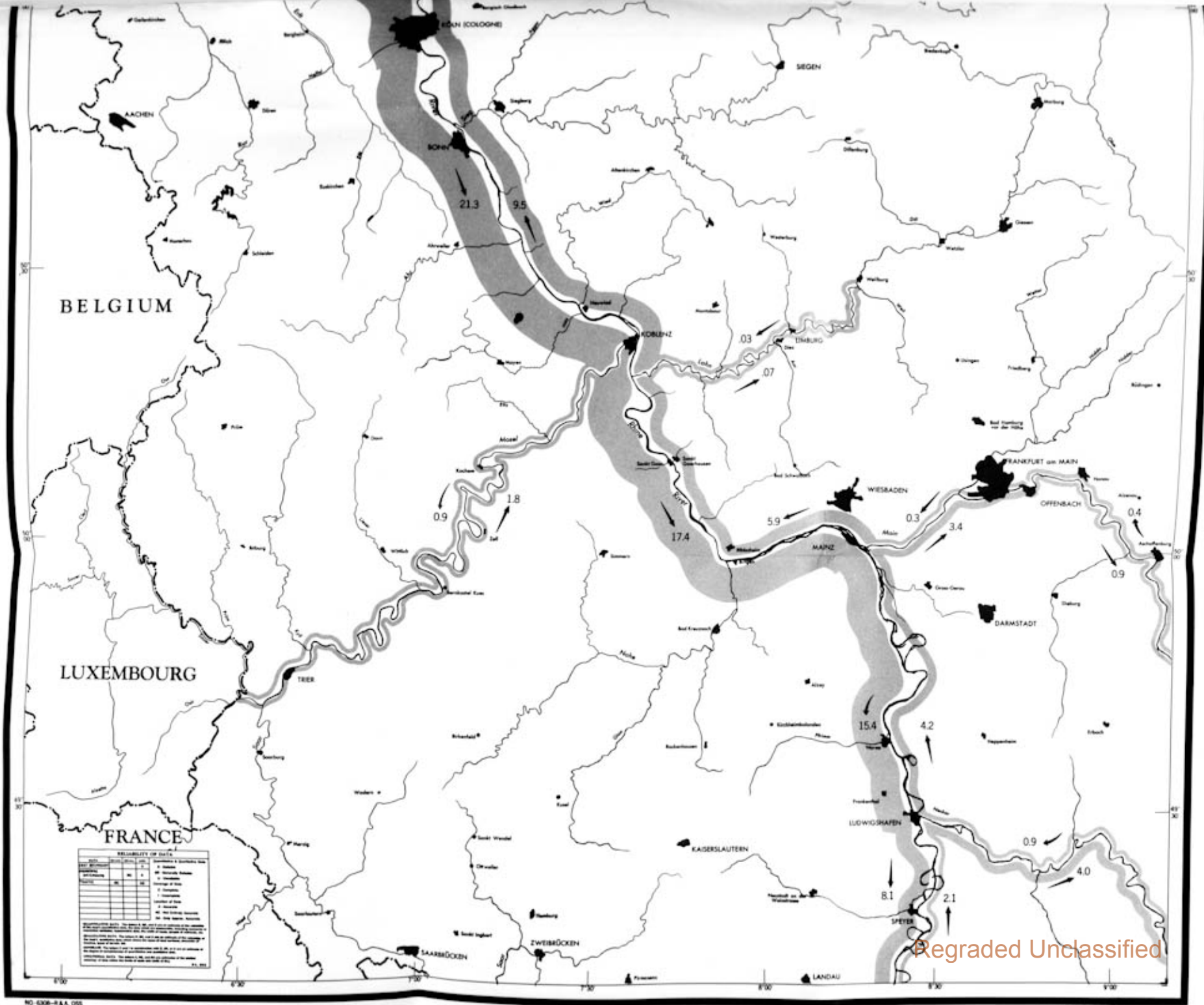
(IN MILLIONS OF METRIC TONS)

32.3
25.0
20.0
15.0
10.0
5.0
2.0 and under

ARROWS AND FIGURES SHOW DIRECTION AND AMOUNT OF FREIGHT TRAFFIC

INTERNATIONAL BOUNDARY (1937)
IMPORTANT CANAL


NETHERLANDS
Rhine
River
Ems
Weser
Elbe
Ruhr
Lippe
Dortmund-Ems Canal
Mittelland Canal
Rhine-Herne Canal
Wesel-Datteln Canal
Lippe Canal
Hohenzollern Canal
Küsten Canal
Ems-Weser Canal
Weser Canal
Elbe-Lübeck Canal
Kiel Canal
Rhine-Herne Canal
Ems-Jade Canal
Wilhelmshaven-Ems Canal
Osnabrück-Ems Canal
Ems-Hunte Canal
Hunte Canal
Oldenburg-Wesermünde Canal
Wesermünde-Bremerhaven Canal
Bremen-Wesermünde Canal
Bremen-Hannover Canal
Hannover-Braunschweig Canal
Braunschweig-Magdeburg Canal
Magdeburg-Berlin Canal
Berlin-Stettin Canal
Stettin-Oder Canal
Oder-Spree Canal
Oder-Havel Canal
Havel-Elbe Canal
Elbe-Trave Canal
Trave-Baltic Canal
Baltic-Trave Canal
Kiel-Baltic Canal
Kiel-Elbe Canal
Elbe-Kiel Canal
Elbe-Weser Canal
Weser-Elbe Canal
Weser-Ems Canal
Ems-Weser



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replied in a sharp note, rejecting the British assertion that her stop meant a violation of neutrality and declaring that the composition of the Commission had no relation to this question. The note also included a clear statement of Russia's attitude toward the Danube question at that point. "The formation of the Danube Commission, with the participation of the USSR and also of states situated on or near the Danube, constitutes a restoration of justice violated by the Versailles and other treaties by which, the British Government having played a leading part, the USSR was kept out of the International and European Danube Commissions. The Danube Commission must naturally be composed of representatives of states situated on or closely connected with the Danube and using it as a trade channel.... It is clear that Britain, being removed thousands of kilometers from the Danube, cannot be classed as such a state."[1]

The Bucharest conference and the events accompanying it made it clear that there was no agreement upon the basic question concerning the Danube between Germany and Russia, the major powers participating in the attempt to rearrange Danubian affairs. In any case, the continued existence of the new organization depended upon the victory of the Axis powers over those nations which for the time being had been eliminated from it.

e. Recent Developments. The new Danube Commission met at Vienna in February 1941, at which session, besides representatives of the Axis powers and the smaller Danube countries, there was also a Soviet delegate. It seems that the Commission discussed only technical questions, without

1. Following the publication of the Soviet communiqué publishing the notes, the Under Secretary of the Foreign Office declared in the House of Commons that Britain regretted the publicity given to the affair, the intention of the British protest having been merely a "reservation of legal rights.

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going into basic issues. German influence became more and more obvious. The Reichsmark replaced the Swiss Franc as official currency for the levying of tolls, and German was adopted as the official language of the organization.

At the end of April, following the German invasion of Yugoslavia, the Yugoslav delegate was excluded from the Commission. German-Russian efforts to come to agreement about the outstanding questions were continued in May 1941, but had reached no conclusion when war broke out between the two powers.

The new Commission functioned under complete German control until the Russian offensive of 1944. The Commission had its principal seat at Vienna, with branch offices at Budapest, Belgrade, and Orsova. Supervision of navigation at the Iron Gates had been conferred upon a subcommittee located at Orsova. The puppet state of Croatia was admitted to the Commission, which since late 1941 was composed of delegates from Germany, Italy, Rumania, Hungary, Bulgaria, Slovakia, and Croatia. This list in itself is sufficient to reveal the complete domination of the Danube by one power, Germany.

2. Other Rivers. No pertinent information on developments on other river systems is available.

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V. SUBSTANCE AND LIMITATIONS OF THE STATUTES OF WATERWAYS OF INTERNATIONAL CONCERN

A. Definitions

1. International Waterways -- the Waterway, the Fairway and the Channel. A waterway is said to be international, or of "international connern", when, in virtue of a treaty provision, a unilateral act, or international custom, it has become subject to an international statute in the interests of navigation. The term international statute has been used here to cover both the international regime and the international organization.[1]

A terminology intended to determine the scope of the international statute was adopted by the Rhine Modus Vivendi of 1938 and has been followed in this report. While the Permanent Court[2] speaks of the port and the navigable channel, the Modus Vivendi uses the terms ports and fairway, these being the constituent elements of the waterway. The distinction between them is not a geographical, but a functional one. The Central Commission, on the other hand, does not use the words "navigable channel" with a legalistic meaning. They are technical terms, with a geographical connotation. They do not mean the same thing as fairway. Thus, in using the fairway between Bingen and St. Goar, vessels may use either navigable channel of the Bingerloch.

2. International Regime. An international regime is the sum total of duties of States with regard to a waterway arising out of the international statute, apart from

1. This terminology appeared only in the late 1920's. The Peace Treaties for example, sometimes used the expression "international regime" with the meaning here given to "international statute". There has been some confusion in this respect, which the terminology here followed aims at dispelling.
2. See Section VIII B 2 a iv.

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those provisions that deal with international organs. Historically the essentials of an international regime have been freedom of navigatuon and its corollary, equality of treatment.

3. International Organization. The international regime may be supplemented by an international organization, usually a river commission. Where no special international organization exists, necessary unified action is taken through the ordinary diplomatic channels.

4. Freedom of Navigation. Freedom of navigation means the unrestricted exercise of all activities inherent in navigation, and the unrestricted use by vessels, cargoes, passengers, and other persons connected with navigation of all facilities and equipment that make the waterway suitable for the purpose of navigation. In its broad sense, navigation includes operations in ports, such as transshipment and storage, and covers the activities of consignors, consignees, and intermediaries, as well as those of shipowners, in the conclusion and performance of contracts for the use of vessels or the carriage of goods, and for towage.[1]

Freedom of navigation benefits the States first of all. It may or may not be internationally secured also to individuals. It may extend to all vessels, or to vessels of all States, only for certain kinds of navigation: for example, direct navigation to and from the sea. Navigation may be permitted only to the vessels of riparian States, while the use of those vessels remains free to the passengers and goods of all nations. Where navigation is restricted in this sense, the privilege

1. See Rhine Modus Vivendi, Ad. Arts. 3, 4, and 8.

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arising from such a restriction may extend to riparians of a whole waterway system, of a single waterway, or of only part of a waterway. Blanket cabotage (the carriage of goods or passengers between ports under the same sovereignty) restrictions may be made, or they may be limited in application: for example, limited to regular services.

B. Waterways and Waterway Systems

1. Limitation of Internationalization by Definition. Practice in the application of the Vienna definition of international rivers, "rivers that separate or traverse two or more States", limited internationalization as of right to that part of a river which was technically naturally navigable to the sea: that is, capable of bearing a vessel. A further limitation is the fact that the tributaries of an international river were considered separately. Unless the general definition applied to it, such a tributary remained national, although it might be nationally navigable.

The Barcelona Convention substituted for the technical definition of a navigable river an economic one: "commercially and normally practicable". This narrowed the field of internationalization somewhat. The Convention continued to maintain that tributaries must fall under the general definition, if they were to be considered international as of right.

With variations, in detail, the Peace Treaties and the Barcelona Statute include in an international river canals lateral to it; this is in conformity with European tradition.

2. Limitation of Representation. As a corollary to the separate treatment of main rivers and tributaries,

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the Vienna system did not grant representation on a river commission of riparian States of the tributaries who were not also riparians of the main river. The unity of a waterway system was recognized only insofar as it was declared desirable that a State that was a riparian both of the main river and of the tributary should be represented on both commissions by the same plenipotentiary.

The limitation disappeared after the first World War. The Barcelona Convention provided that riparian States of any international part of the waterway system should be considered as riparians of the whole system.

C. The Interests of Nonriparian States

There has been, perhaps, too much emphasis on freedom of navigation for vessels of nonriparian States, and on equality of treatment between riparian and nonriparian vessels. Actually interests of nonriparian flags or registers in inland navigation are slight. On the Rhine above Gorinchem and Krimpen, for example, where equality has existed in fact since 1868, and legally since 1919, and where cabotage is unrestricted, the share of nonriparians in the traffic has remained negligible. For direct navigation, on the other hand, to and from the high seas on the Wester Schelde, the Nieuwe Waterweg, the Danube as far as Brăila, and the Elbe as far as Hamburg, freedom for all flags and equality of treatment are absolutely essential, owing to the steady use of these rivers by sea-going vessels.

The presence of nonriparian States on the river Commission may be justified on that account. It may also be accounted for by the interest of nonriparian States in the traffic of goods on all parts of the waterways. This second reason, which is weaker than the first, has been the one usually given.

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The Barcelona Statute made representation of non-riparians the only criterion for distinguishing between major and lesser international waterways. This was the outcome of an effort that failed to find a general formula that would cover the solutions of the Peace Conference and that would be acceptable to all States represented.

It was argued by the opponents of nonriparian representation that the selection of the States made at the Paris Peace Conference was political. There was some evidence of this in the choice of Italy for the Rhine and the Elbe Commissions after the United States had refused to participate. The choice of Belgium for the Elbe Commission was made at the suggestion of the Czechoslovak delegation. The absence of Greece on the Danube Commission may justly be criticized.

There is a discrepancy in geographical incidence between the powers of the river commissions and the interest of nonriparian States. Where that interest is greatest -- in the lower reaches of the river -- the powers of the commission are generally less, except where there is a special commission for the mouths, as in the case of the Danube and the Wester Scheldt. Thus, the powers of the Rhine Commission were less extensive over the delta than over the river above Gorinchem and Krimpen. The Elbe Commission failed to maintain full police power over the maritime section of the river.

In the case of the Rhine, this was exclusively due to historical reasons; in the case of the Elbe, the wish not to interfere with Germany's main port, except for the needs of landlocked Czechoslovakia, undoubtedly played a part.

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From a general survey of the waterway systems dealt with in this report, it appears that both inland navigation and maritime navigation are vitally affected by existing statutes. Continental Europe's three main maritime ports -- Antwerp, Rotterdam and Hamburg -- and several of its important ports -- Ghent, Amsterdam, Stettin, Danzig, Memel, Galati, Brăila -- are part of waterway of international concern, or have an international statute of their own similar to that of an international waterway.

The General Convention and Statute of Geneva, 1923, on Maritime Ports applies to most, if not all, of these ports. There can be not conflict here with the General Convention and Statute on Waterways of International Concern, as both statutes contain the same provision on greater facilities.[1] Under this provision, whichever statute provides on a given point for greater facilities takes precedence over the other.

D. Nationality of Vessels

A vessel and its crew form a unit endowed with nationality and with a legal status more or less like that of a legal person. This differs from the status of railroad locomotives, which are normally limited in their operations to one territory. With the exception of sleeping- and dining-car attendants and conductors, railway freight and passenger cars passing from one territory to another usually have no personnel attached to them. In inland navigation the vessel is frequently even the permanent home of the bargeman and his family. The special legal character of a vessel in inland navigation, while recognized in the European system, has not been as universally acknowledged as that of sea-going ships.

1. See Section III C 3.

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The nationality of an inland navigation vessel is demonstrated by its right to carry a flag. General European practice is expressed in the Geneva Convention of 9 December 1930 on the use of the national flag in inland navigation. However, the Convention was not signed by Germany, Austria, the Netherlands, or Switzerland.

After the first World War, Germany had taken the position that craft engaged in inland navigation were not legally entitled to carry a flag, and that they had no nationality apart from that of their owner, with the implication that they were altogether subject to the law of the country in which they happened to be at any given time. This was contrary not only to usage, but also to the Mannheim Convention, and represented a complete change from Germany's pre-war position.[1] The reasons for this attitude are not clear. It may have been an attempt to evade the armistice provisions and the provisions of the Versailles Treaty,[2] And perhaps to minimize the consequences of internationalizing the rivers. In any case, the Rhine Modus Vivendi shows that by 1936 Germany and Switzerland, at any rate, had given up the position they had temporarily adopted. The position of the Netherlands on this question was a logical one. She maintained that freedom was an individual right, independent of the nationality of either the vessel or its owner. This contention was rejected by Germany,

E. Permanent Character of the International Statute

1. In fact, Germany in its Binnenschiffahrtgesetz (code of inland navigation) had gone much further than other States in giving inland navigation vessels an entirely different status from that of other inland transport equipment.
2. These provisions referred to precautionary measures and economic sanctions. The idea behind the German attitude may have been to facilitate fictitious transfer of German interests to citizens of ex-neutral States.

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In the European concept, the international regime of waterways is a permanent one; it is, therefore, of a legal nature akin to that of boundary settlements. Its application may be temporarily stopped by war, but is resumed when hostilities stop. The rights and duties of a State, as determined by the international regime, over a part of an international waterway are transferred along with a transfer of sovereignty from that State to another. However, when the international character results only from the applicability of a general definition, such as that of the Congress of Vienna, or of the Barcelona Convention, the result of changes in the boundaries may be such that the definition no longer applies to the waterway. Whether or not the waterway loses its international character in this case is not quite certain. In practice riparian States have acted on the assumption that such a waterway become national. This action has not been challenged.

Normally, the international organization which is part of an international statute is permanent.[1] When an appraisal of voting power on the basis of the relative importance of territorial interests is part of the organizational design, changes in territorial sovereignty may require a revision of the existing power. If no new agreement is reached, it may be unfair to a certain State or States, but it does not seem that they may refer to the change in conditions as a reason for holding the international character of the waterway system, or even the organizational part of the statute, to be void.

1. There are exceptions. The provisional status of the European Danube Commission over a long period of time was an outstanding example.

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F. Effect of War on the Statutes of International Waterways; Land-locked States

1. Neutrality. The principle of neutrality for international waterways broke down in the second half of the 19th century and has not been revived. It was finally replaced by a new provision in the Barcelona Convention. "The international statute continues in force in time of war so far as the rights and duties (of belligerents and neutrals) permit." This provision was included in the Elbe Act and the Rhine Modus Vivendi. The provision is intentionally ambiguous and imposes no specific legal duty. Nonetheless, the fact that there was still some recognition of the rights of neutrals on international rivers was illustrated, from the beginning of the war to May 1940, by the attitude of France and Germany towards Switzerland, which continued to use the Rhine.

2. Land-locked States. Both the Elbe Act and the Rhine Modus Vivendi contain provisions concerning the special case of a land-locked State. In Art. 49 of the Elbe Act, Germany undertook "save in case of physical impossibility" to provide Czechoslovakia with an alternative route if war hindered its transit on the Elbe. In the Rhine Modus Vivendi, Art. 72, the contracting States undertook to "consult together with a view to substituting for the Rhine other means of communication between Switzerland and the sea", if navigation on the river were interrupted.

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VI. MAJOR PROBLEMS OF ORGANIZATION AND PROCEDURE CONCERNING THE RIVER COMISSIONS

A. Composition of the Commissions

1. In General. On the main European waterway systems, river commissions, or analogous bodies such as the Permanent Technical-Hydraulic System Commission of the Danube, are[1] composed of representatives of each riparian State, and representatives of nonriparian States -- or unions of States such as the League of Nations -- especially entrusted with general interests. In the case of the Danzig Harbor Board, the League of Nations' appointee acted as umpire among the riparian interests represented on the Board. This role on the Memel Harbor Board was intended to be taken by an impartial third member.

Traditionally, there has been one representative per State. An attempt was made to depart from this tradition on the Rhine, the Elbe, and the Oder Commissions. This attempt was not particularly successful, and the Modus Vivendi for the Rhine reverted to the old system.

2. The Commissions. The composition of the individual river commissions is as follows:

a. Rhine.

Switzerland	2
France	4
German riparian States	4
Netherlands	3
Belgium	2
Great Britain	2
Italy	2

France, also appointed the permanent President.

b. International Commission of the Elbe

Czechoslovakia	2
German riparian States	4
Belgium	1

1. The statutes of international waterways are permanent in their nature. In order to avoid implications to the contrary, the present tense has been used in the following chapters except in the case of historical analysis.

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France	1
Great Britain	1
Italy	1

c. International Commission of the Danube

German riparian States	2
Each other riparian State	1
Each nonriparian State on the European Commission	1

d. European Commission of the Danube

France, Great Britain, Italy, Rumania	each one delegate and one assistant delegate

e. International Commission of the Oder

Czechoslovakia	1
Prussia	3
Poland	1
Denmark	1
France	1
Great Britain	1
Sweden	1

f. Permanent Technical Hydraulic System Commission of the Danube

Each State territorially concerned	1
League of Nations	Chairman

g. Memel Harbor Board

Lithuania	1
Memel Territory	1
League of Nations	1

h. Danzig Port and Waterways Board

Equal number of Polish and Danzig Commissioners not in excess of five. President chosen by agreement between Poland and Danzig. If no Agreement, by the League of Nations who appoints a Swiss national.

B. Powers

For powers of specific river commissions, see Table 1.

C. Mode of Deliberation

1. General. In general, the principle governing the voting power in a river commission is that expressed by the Peace Treaties, "Whatever be the number of members present, each delegation shall have the right to record

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a number of votes equal to the number of representatives allotted to it." However, in judicial matters each delegate has one vote, and exercises it individually.

2. Quorum and Casting Vote. The number of delegates required to provide a quorum varies. On the Rhine Commission, there is no quorum except in judicial matters. When the Commission sits as a court, the quorum is five, a rule which came down unmodified, from the time when there were eight members. The European Danube Commission requires a quorum of three delegates; the International Danube Commission, two-thirds of the delegates. On the Elbe Commission four delegations, representing at least six votes, are necessary. But three members from three different States constitute a quorum for judicial matters. The Danube Hydraulic Commission has a quorum of four, which has to include the Chairman.

The President of the Rhine Commission has no special powers, except for a casting vote in judicial decisions. He has made it a practice, however, to abstain from voting, except in judicial matters. The President of the Elbe Commission also has no special powers, other than that of a casting vote in judicial decisions. The President of the Danzig Harbor Board casts his vote only in case of an equal decision.

3. Power of Decision.

a. Rhine Commission. The Mannheim Convention required that decisions be taken by an absolute majority of votes. The decisions became obligatory upon approval by the Governments. The Additional Protocol Concerning Adherence of the Netherlands to the Rhine Provisions of the Treaty of Versailles (1923) determines that "resolutions ... shall be adopted by a majority of votes", and

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Table 1.- POWERS VESTED IN THE COMMISSIONS BY INTERNATIONAL STATUTES

Powers	Central Commission for Navigation of the Rhine	European Danube Commission	International Danube Commission	International Elbe Commission	Danzig Board	Memel Board	Danube Hydraulic Commission	
1. a. Generally, to maintain free navigation on the waterway	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
b. To maintain existing free zones or "free ports"	Yes					Yes	Yes	
2. To maintain equal treatment of all flags	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
3. To safeguard international interests in matters of public works								
a. Maintenance works								
i. Supervisory power over upkeep works	Yes		Yes	Yes				
ii. Executory power over upkeep works		Yes			Yes	Yes		
b. Works of improvement								
i. To draw up program of works	Yes		Yes	Yes				
ii. Express power to make inspections	Yes[a]			Yes				
iii. Executory power over improvement works		Yes	Yes[b]		Yes	Yes		
c. Works not intended to maintain or improve navigability								
i. To forbid construction if detrimental to navigability	Yes		Yes					
ii. To supervise construction to see no harm done to navigation				Yes				
iii. Special powers in regard to planning and supervision of works such as canalization, irrigation, electric power							Yes	
4. To establish uniform police regulations								
a. Police of navigation	Yes	Yes	Yes	Yes				
b. Police of ports, especially					Yes	Yes		

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Powers	Central Commission for Navigation of the Rhine	European Danube Commission	International Danube Commission	International Elbe Commission	Danzig Board	Memel Board	Danube Hydraulic Commission
5. To effect policing		Yes			Yes	Yes	
6. In regard to dues							
a. To review dues and supervise legality of their collection	Yes	Yes	Yes	Yes	Yes	Yes	
b. To collect the dues themselves		Yes			Yes	Yes	
c. Navigation dues, in particular							
i. To authorize works for improvement			Yes				
ii. To authorize works for improvement under exceptional circumstances				Yes			
iii. To establish dues to meet the cost of works		Yes					
7. To act as an appellate court for cases arising out of the exercise of navigation	Yes	Yes[c]	s	Yes			
8. To pronounce upon complaints arising out of the application of Treaties and Regulations made under them	Yes	Yes	Yes	Yes			Yes
9. To report regularly on the state of the waterway and navigation on it. (This may be done on the basis of inspection or study of information gathered by either national or Commission officials.	Yes	Yes	Yes	Yes	Yes	Yes	Yes[d]
10. To investigate disputes among States	Yes	Yes	Yes	Yes			Yes
11. To provide for the unffication of national laws and regulations affecting navigation	Yes	Yes	Yes	Yes			

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Powers	Central Commission for Navigation of the Rhine	European Danube Commission	International Danube Commission	International Elbe Commission	Danzig Board	Memel Board	Danube Hydraulic Commission
12. To pronounce upon extensions of territorial juristiction of the Commission	Yes	Yes	Yes	Yes		Yes	
13. To determine its own internal organization	Yes	Yes	Yes	Yes	Yes	Yes	Yes

a. Of course, the term, inspecting, includes not only what the Inspectors of Navigation did. Much more important committees entrusted with "exploration" or "study" did nothing else but inspect, although the Acts and Minutes were shy of using this terminology.
b. The Commission has this power only when the State cannot or will not do it.
c. The European Danube Commission had only penal jurisdiction.
d. On the state of the waterway and non-navigational interests, including fisheries.

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that "no State shall be obliged to take steps for the execution of any resolution which it may have refused to approve." This was merely a return to what was intended at Vienna, and was the practice of the commission, at least until 1871. Many decisions do not require approval by all the States to become effective, since some States have no duties with respect to the execution of the decision. Approval by the States upon whom such duties are incumbent is actually sufficient. Other decisions, however, such as those concerning police regulations, are so definitely of common interest that no States seldom feel free to dissent, and that a change is not lightly made without concurrence of all. On the whole, the Commission had functioned and continued to function as a semi-independent body.

b. Danube Commission.

i. The European Commission. On the European Commission, majority decision is accepted for matters of form -- for example, internal organization -- and for modification of the navigation dues. On matters of substance, a unanimous vote is required. Majority decisions become final immediately, unless the vote does not represent an actual majority of the Commissioners. In this case, and in all decisions requiring a unanimous vote, two months are allowed for the recording of negative votes of absent delegates before the decision becomes final. In practice, the Commission itself determined what was a matter of form and what a matter of substance, and in doing so exercised discretion.

ii. The International Commission. The two-thirds majority for decision on the International Danube Commission was introduced at the request of only one riparian State

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Yugoslavia. When the Statute was being drawn up, the delegations could not agree on a method of reaching valid decisions. Methods varying between a simple majority vote and unanimity were suggested. To reach an agreement, the two-thirds rule was proposed and adopted. It has not proved successful. There are three exceptions provided in the Statute in which unanimity is required: decisions to extend the territorial jurisdiction of the Commission, decisions to alter the basis for the assessment of river dues, and matters concerning the appointment of certain officials.

c. Elbe Commission. In general, decisions on the Elbe Commission are taken by a majority vote. There are certain exceptions. Decisions to impose dues for improvement works require the votes of seven delegates. The extension of territorial jurisdiction, and the appointment of the Secretary General and his Assistant require a unanimous vote.

d. Permanent Technical Hydraulic System Commission of the Danube (Danube Hydraulic Commission). In general the decisions of the Danube Hydraulic Commission, of which the full title is the Permanent Technical Hydraulic System Commission of the Danube, are taken by a simple majority vote. A State whose delegate voted with the minority has no obligation to take measures for the execution of a decision it has not approved.

e. Memel Harbor Board. Decisions of the Memel Harbor Board are arrived at by a simple majority vote, and Lithuania engaged to give effect to decisions taken under the Memel Statute. The delegate of Memel voted with the delegate of Lithuania in favor of entrusting to the latter, instead of to the delegate of the League of Nations, the chairmanship of the Board.

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f. Danzig Port and Waterways Board. Decisions of the Danzig Port and Waterways Board are taken by simple majority. In case of an equal division, the vote of the President is decisive.

VII. ADMINISTRATION OF THE RIVER COMMISSIONS

A. Personnel

1. Commissioners. Traditionally, commissioners have had full diplomatic powers. They rank among the diplomatic representatives listed by the Congress of Vienna. Do they act as diplomatic representatives of their State? Unquestionably yes, when it comes to negotiating the revision of existing treaties and agreements. Unquestionably no, when they are acting in a judicial capacity. In between, there is the vast sphere of their administrative activity ranging from routine to major decisions. Early statements by some of the Commissioners for the Rhine say that they were not bound by instructions. They claimed to be entrusted with broad power to act in the general interest. On the other hand, obviously, when a complaint is lodged against a State, the representative of that State is acting in its defense. If a dispute arises, the representatives of the parties to the dispute cannot completely avoid acting as agents for their States, while the other commissioners are more truly arbitrators.

After 1919, in the commissions which provided for several representatives from a single State, there was a de facto division of functions. This varied with the States. The first ranking German representative on the Central Commission and on the other river commissions was from the Foreign Office. France tended to appoint, as President of the Central Commission, a Senator with a technical background.

Commissioners of nonriparian States, in general, acted in the international interest, and not as spokesman for a national policy. After 1932, however, this changed completely as far as Italy is concerned. The Italian

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representative quite cynically played a game in support of Germany, while often pretending to the role of "honest broker." It has become the practice of most States to appoint the same person, or persons, as members of all the river commissions on which they are represented.

2. High Officials of the Commission. The number and duties of high officials of a commission vary with its internal organization and its responsibilities. While, in general, river statutes have made no effort to determine the outlines of this internal organization, offices thought to be particularly important are frequently specified. This is especially true when it is thought necessary to guarantee a fair division of such offices among riparian States. Such officials serve under the commission, their duties are outlined by the commission, and they are appointed, paid, and dismissed by the commission.

a. Central Commission. With the exception of the Inspectors of Navigation, the Mannheim Convention left the problem of internal organization to the discretion of the Commission. In fact, there was no permanent staff for the commission from 1868 to 1921. From 1921 to 1936, the Secretariat was composed of a Secretary-General, an Assistant Secretary-General, and three other members, one of whom was an engineer, and another an international lawyer. The engineer acted as Secretary to the special Commissioners for "voyages d'exploration". The Secretary-General himself, with the assistance of the jurist member, acted as Registrar of the Commission when it was sitting as a court.[1]

b. Danube Commissions. The organization of the

1. The Inspectors of Navigation on the Rhine are dealt with in the Mannheim Convention. They are appointed and paid by the State or States included in the inspection district, but work under the authority of the Central Commission. They were originally intended to be key figures in the maintainance of free navigation on the river, but in practice have had little importance.

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European Commission had grown out of the varied and increasing responsibilities and obligations of the Commission, and it was maintained without question by the Danube Statute.

The Statute, however, does clearly determine the basic organization of the International Danube Commission, which closely follows the pattern of the European Commission. A Secretariat, a technical department, a navigation service, and an accounting and tax-controlling department are specified. Certain rules dealing with nationality are laid down by the Statute for the selection of the chiefs of these departments. The Commission, however, is free to add other departments when necessary.

The Iron Gates Administration is a supplementary organization set up under the International Danube Commission. The agreement setting up the services at the Iron Gates is closely concerned with their internal organization. A public works service and a navigation service are specified, as well as an accountancy office and a treasury. In choosing the chiefs of these services and the lesser personnel, the principle of equality is to be maintained with respect to nationality.

c. Elbe Commission. The Elbe Statute expressly provides for the establishment of a permanent Secretariat, even specifying its internal structure and duties. It provides that the two high officials of the Secretariat can not be of the same nationality. Beyond this, appointment of the members of the Secretariat falls to the Commission, which likewise pays and dismisses them. No mention is made of other officials or services in the Act.

d. Danzig Board. The Danzig Harbour Board system is based on a balanced personnel, with equal participation by nationals of both Poland and Danzig. The chief officials

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are the Technical Director and the Commercial Director. In practice the first has been a Danziger, the other a Pole.

3. Petty Functionaries. The lesser officials of a commission are chosen at the discretion of the commission. Some Statutes -- for instance, the Danube Act -- provide that they should be chosen as equally as possible from subjects of the riparian States, others leave the matter entirely in the hands of the commission. They are appointed, paid and dismissed by the commission and work directly under it.

B. Budgets

1. Financially Dependent Commissions. The commissions draw up and approve an annual budget. In the cases of the Rhine, the Fluvial Danube, the Elbe, and the Danube Hydraulic Commissions, and of the Memel Harbor Board, the burden of the expenses of the commission falls upon the riparian States. For the Fluvial Danube and the Danube Hydraulic Commissions, each State assumes an equal share. For the Rhine and the Elbe Commissions, the burden is apportioned to the number of delegates to which each State is entitled. The Rhine Modus Vivendi, however, returned to the system of equal shares.

The Danube and Elbe Statutes authorize their Commissions to fix upon other means of providing funds where possible. If funds are available, the Commissions may designate how and where they are to be used. The International Danube Commission prepares the budget of the Iron Gates Administration. The funds are largely to be furnished by the receipts from dues authorized by the Commission and levied on that section of the river. The Memel Statute stipulates that "the expenses of the Harbor Board are to be born by the Lithuanian

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government, but the authorities of the Memel Territory are to contribute when possible."

2. Financially Independent Commissions. The European Danube Commission and the Danzig Port and Waterways Board are financially independent. The European Commission is authorized to levy taxes and dues to meet its expenses, and to negotiate loans when necessary. Expenses of the Danzig Board are covered by receipts from the services administered by the Board.

C. Privileges and Immunities

1. Introduction. The privileges and immunities generally accorded to the members, personnel, offices, and archives of river commissions are based upon the fact that delegates to the commissions are considered to be diplomatic representatives of the States, and upon the need for keeping the commissions as free as possible of national pressures. Naturally, diplomatic privileges and immunities never adhere to a representative of the State as against his own government. The question, however, is entirely different with respect to an international official. The inherent necessities of the position, and the trend of opinion among authorities of international law is in the direction of treating international officials alike, whatever their nationality. France and Germany, however, refused to accept this. It must be recognized that the proper solution of the problems raised by the extension of diplomatic privilege and immunity to an international official against his own State is dependent on the development of international jurisdiction in penal as well as private matters. For the most part, specific provisions of the Statutes determine to whom and to what extent the privileges and immunities will apply. Even petty officials or agents have an international

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character irrespective of their nationality, and are to be free of national pressures.

2. Central Commission for the Rhine. A statutory provision for privileges and immunities of the delegates to the Central Commission was included, as a neutrality provision, in the Statute of 1804. It was maintained until 1868, when it was dropped along with the neutrality provision. After World War I, the Commission now meeting on French territory, requested the French government to make a statement on the question of diplomatic privileges and immunities. No complete answer was given, but the French government replied: "In the future, the representatives to this Commission, as well as its agents, traveling on its service, will benefit by the same facilities as if they enjoyed diplomatic immunities." In fact, the question never became acute. The Secretary-General consistently claimed and was granted full diplomatic status for himself, his officials, his offices, and archives. This was not the case, however, of his French assistant. The latter, however, was not a full-time official of the Commission. Income tax was claimed by the State from the agents or petty personnel who were of French nationality, but the Commission refused to disclose their salaries. No other questions concerning them were ever raised.

3. European Danube Commission. The European Danube Commission, as an international administrative and executive body, is in a somewhat different position from the other commissions. The Commission was declared to be "completely independent of any territorial authority" by the Treaty of Berlin, and, therefore, its personnel could clearly not be subject to such authority. Owing to the character of this Commission, and the work done by its

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officials, the immunity extends to all its functionaries, including the petty officials.

4. International Danube Commission. The Danube Statute states that "the property of the (International) Commission, and the Commissioners themselves are entitled to the privileges and immunities of diplomatic agents." There is no doubt that the provision was intended to be a limitation. The question of extending immunity to the secretariat and other civil servants of the organization was actually discussed, but was discarded at the request of Yugoslavia.

5. Iron Gates Administration. The Agreement regulating the special services declares that "all officials without exception ... shall be free, in respect of the exercise of their duties under the Administration, from any interference, either direct or indirect, from the territorial authorities of the riparian States." This is only a limited immunity.

6. Danube Hydraulic Commission. The Statute of the Danube Hydraulic Commission states that "the President, the delegates, as well as their assistants, the members and the personnel of the Secretariat and of the delegations will be treated in the exercise of their functions respectively as the chief, the members and the personnel of an accredited diplomatic mission." This provision is more limited than that of diplomatic representatives.

7. International Elbe Commission. The Elbe Statute specifically extends the benefit of diplomatic privileges and immunities to the delegates, the Secretary-General, and his assistant. The German Secretary-General, or Assistant Secretary-General of this Commission was not accorded any immunity or privilege by the German Government.

8. Memel Harbor Board. The Memel Statute declares that no member of the Harbor Board shall be interfered with or molested on account of actions committed in the discharge

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of his duties. There is a further guarantee for the member of the Board appointed by the League of Nations in the provision stating that he shall have all the personal diplomatic immunities.

9. Danzig Port and Waterways Board. In virtue of an agreement concluded under the auspices of the High Commissioner, the President of the Board has diplomatic privileges and immunities in both Danzig and Poland. The Polish members have diplomatic rights in Danzig; the Danzig members, in Poland.

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VIII. FUNCTIONS OF RIVER COMMISSIONS

A. Legislative Functions

The legislative functions of the commissions in connection with the drawing up of river statutes and their revision are generally accepted. While the riparian States are authorized to propose additional legislation of this type to a commission, no changes can be made by unilateral action in the international arrangements for a river system.

The Mannheim Convention declares that the Central Commission is to deliberate on all measures tending to modify or complete the existing Convention and the Regulations made under it. This is not expressly stated in the Statute for the European Danube Commission. In fact, however, the members of this Commission attended the Danube Conference of 1920-1921 in an advisory capacity, deliberated with the Commission for Conciliation of the League of Nations upon the changes in the Treaties envisaged in 1923-1928, and were actual signatories of the Arrangement of 1938 by virtue of special powers. The International Danube Commission is not granted a similar power by the Danube Statute. In virtue of the Treaty of Versailles, the Elbe Commission drew up the statute for that river system.

B. Executive and Administrative Functions

1. Technical

a. Introduction. Prior to 1919, the Mannheim Convention, which established a system for the development of public works on the Rhine, was the text representing most clearly the European attitude in regard to public works. In contrast, the system that prevailed at the Danube mouth grew accidentally from historical circumstances, and the Scheldt and the Elbe systems were

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antiquated, without regard for the potentialities of hydrotechnical development. Although the Barcelona Statute presents fundamentals for a progressive development of international rivers in general, and the Acts for the Danube and the Elbe do the same for the particular river systems, the various solutions adopted for works of improvement represent, in a sense, a step backward from the Mannheim Convention. It may be contended that hydrotechnical potentialities have become so great that the burden of improvements may prove too heavy, and the consequences too far-reaching, to impose such construction upon riparian States unconditionally.

In the Barcelona Statute, therefore, an attempt was made to establish a basis for equalizing the financial burden. Riparian States are responsible, in principle, for maintenance but not for improvements. Under certain circumstances they can be forced to undertake necessary works of improvement, or to allow such works to be carried on in their territory, if the State requiring them is ready to pay the cost. States paying for such construction can reimburse themselves by reasonable navigation dues. The whole principle is qualified by the recognition of vital interests other than those of navigation as being reasonable grounds for refusal to carry out, or to allow to be carried out, a given piece of work.

b. Priority of Navigation. The priority of navigation interests over other interests in and around waterways of international concern is part of the European tradition. It has never seriously been questioned. The priority of navigation is most clearly shown by the requirements to be met in railroad and highway bridge construction. Since imperative needs --

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such as those of irrigation in arid or semiarid lands -- do not normally arise in Europe, priority of navigation is not likely to be challenged, except occasionally by the demands of hydroelectrical production. In any case, other interests have not been disregarded. For example, the level of the Rhine between the Bingerloch and Mainz has been maintained primarily in the interests of viticulture.

Normally, the claims of hydroelectrical works and navigation are not rivals. The construction of works whose cost would be prohibitive if they affected navigation alone become possible when the benefits derived from harnessing water-power are added. The works on the Rhine between Basel and Konstanz illustrate this. However, they may be conflict. Such a conflict of interests might appear on the Rhine between Strasbourg and Basel, if the plan provided by Art. 358 of the Versailles Treaty were carried out in full.[1] Vigilance is needed to protect navigation from injury as a result of such construction. In fact, harm has been done to navigation by construction in the Netherlands.[2]

The Barcelona Statute, however, introduced in some respects a balance between navigation and other interests. Art. 10, Para. 3 provides that the use of water-power interests and other nonnavigational interests may be invoked to justify a refusal to undertake certain works of improvement. The Elbe Statute adopted a provision similar to that of the Barcelona Convention. This

1. The construction of several dams with locks in addition to the one at Kembs might impair the present facilities for navigation, which exist as a result of successful regularization of this sector.

2. This is a reference to the construction outside that part of the Rhine-Meuse-Scheldt delta which is especially protected by Art. 30 of the Convention and Ad. Art. 30 of the Final Protocol of Mannheim.

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innovation does not affect rivers such as the Rhine, where the unconditional duty of improvements benefitting navigation is part of the law as it stands.

c. Duties of the Riparian States

i. Maintenance. Determination of the need for maintenance work to preserve navigability, as well as the execution of such work, is the responsibility of each riparian State. In European practice, generally, each riparian State must bear the cost for its territory. The Barcelona Statute, however, calls for financial assistance from other directly interested riparian States when the burden on one State is unreasonably heavy. The Danube Act includes this principle. In practice this applies only in very exceptional cases.

ii. Improvements. Under the Mannheim Convention, the responsibility of the riparian States for works of improvement is as great as that for maintenance. The Belgo-Dutch Draft Treaty, the Rhine Modus Vivendi, and the Danube Act (the latter, with the proviso that the States do not have to make improvements, unless granted the right to impose compensatory dues on navigation) all recognize this obligation of a riparian State. The Elbe Act does not admit an unqualified duty of improvement. It provides for reasonable grounds for opposition to such works, founded upon nonnavigational interests.

iii. Works Constituting Potential Obstacles to Navigation. It is the duty of a riparian State to see that no obstacles are placed in the way of navigation, and to abstain from any work that might create such an obstacle. The Barcelona Statute tried to provide an equitable basis for judging between navigation interests and other water interests, and for recognizing the claims on other interests wherever such recognition was

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reasonable. The Rhine Modus Vivendi of 1936 expresses European doctrine on this point. Riparian States "shall insure that navigation is not impeded by artificial works (travaux d'art), or their operation, or by any works whatever, or their execution." Dams, bridges and submerged or aerial cables are expressly mentioned. The same principle applies to pontoon bridges to floating establishments such as baths, and to ferries. As stated in the Final Protocol, however, the word "impede" must be understood to mean "causing serious difficulties". The same idea is expressed in the Elbe Act: in appraising works which might entail consequences prejudicial to navigation, the Navigation Commission must take into consideration all the interests of the riparian States.

iv. Ports. Special provisions of the Rhine Modus Vivendi deal with the maintenance and improvement of ports. Facilities for loading, unloading, and storage should keep pace with the necessities of traffic. Thus, in the Modus Vivendi, the principle is the same for the fairway and for the ports. This constitutes no innovation with respect to the Mannheim Convention, although there the provisions are less clearly stated. The Elbe and the Danube Acts do not differ materially from the Rhine Statute.

There is a fundamental difference, however, between the three main European Statutes on the one hand, and the Barcelona Statute on the other. Here no provision is made for the maintenance and improvement of ports.

d. Powers of the River Commission

i. Decision. The Barcelona Statute provides as a minimum that commissions on which nonriparian States are represented are empowered to indicate to the riparian States action advisable for the upkeep of

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works and the maintenance of navigation, and to receive from the States information on all schemes for improvement of the waterway. It further provides that before a question concerning works becomes the subject matter of a dispute, a decision will be made by the commission. The Versailles Treaty provides for the maintenance of existing commissions for the Rhine and for the Danube Mouth with at least their former powers, and for new commissions for the fluvial Danube, the Elbe, the Oder, and, if requested, the Niemen. The Versailles provisions empower such commissions to interest themselves in the maintenance and improvement of the respective waterways. There are also, as we have seen, special Acts concerning navigation on these rivers which, taken together, provide the basis for the activity of such commissions in regard to works along the waterways.

(1) Maintenance. In general, maintenance work on a waterway is subject to the action of the river commission only when a definite complaint or question is brought before it. The commissions are entitled to information on all work done, but normally no specific action is required. In particular, the systems on the Rhine and the fluvial Danube[1] conform closely to this general rule. The Elbe Commission has general power to supervise maintenance and improvement of the navigable channel.

(2) Improvements. The powers of the river commissions are more strictly defined with regard to improvements than to maintenance, and, in a sense, their field of action is much greater. Major works of this type are more likely to create serious conflicts between

1. In the case of the fluvial Danube, two programs are provided: one for important works of improvement, and one for works of current maintenance and improvement.

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the interested States, and an impartial body with power to decide, or at least, to discuss and make recommendations on these issues is highly desirable. All programs for improvement on the fluvial Danube, and the Elbe must be submitted to the appropriate commission for examination and approval. Practice on the Rhine is similar. In each case the commission can forbid the execution of such projects as are clearly injurious to navigation.

The commissions also have the duty of determining necessary works of improvement. In the case of the Rhine Commission, this is implemented by the power to have periodic inspections made. Both the International Danube and the Elbe Commissions are expressly empowered to draw up general programs of work for their waterways, respectively, on the basis of proposals made by the States. Both Acts bind the States to carry out such programs. This is implemented in the case of the fluvial Danube by giving the Commission power to execute such works itself in the event of refusal by the State or States concerned, but limited in the case of the Elbe by allowing the States to oppose such a program on the ground of vital interests.

(3) Works Constituting Potential Obstacles to Navigation. Works which might hinder navigation, or in the Elbe Statute, "which have as a primary purpose objectives other than navigation," are also subject to approval by the river commissions in the cases of the Elbe and the fluvial Danube. Although this is not expressly stated in the Mannheim Convention, it is the invariable practice of the States represented on the Central Commission.

The Danube Hydraulic Commission has special power with regard to works of canalization, inundation,

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irrigation, drainage, and electric power. The Commission has jurisdiction when such works are carried out by one State and fall partly on the territory of another, or when the source of water or power is on the territory of another State. The Commission is to "bring to a conclusion, supervise, and if necessary, secure execution of all such work". Special emphasis is placed on afforestation and deforestation problems, with a view to maintaining and improving the uniform character of the hydraulic system. Furthermore, the Commission is to have regard for services, such as the hydrographic service, which reports on the rise and fall of the water. It is to study those questions of navigation that are outside the responsibility of the International Danube Commission, fisheries in particular, and to "undertake, in addition, all works and studies, and create all services entrusted to it" by unanimous agreement of the interested States.

(4) Examples of Activities of the Commissions with Regard to Works. In the Convention for the settlement of Technical and Economic Questions on the Frontier Section of the Danube ... between Czechoslovakia and Austria of 1928, maintenance works, as distinct from works in the interest of flood control, are defined as maintenance of works in the normal water channel, maintenance of works in the low-state channel, marking of the fairway, cleansing of the river bed, and dredging of shoals. Practically all maintenance activities undertaken on the Rhine, Danube, and Elbe systems fall within these categories.

Typical maintenance works executed in the inter-war period were:

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For the Rhine

Bavaric-Baden sector - Regular soundings made. Channel dragged for obstacles such as trees and rocks. Raising of obstacles discovered.
Bingen-Netherlands sector - Dredging done at St. Goar and various other places.

For the Danube (International Commission)

Regensburg-Hofkirchen sector - Periodic dredging to keep channel deep enough.
Passau-Linz sector - Periodic removal of boulders, especially below Aschach. Establishment of signals between Passau and Wesenufer. Heavy dredging at and below Aschach.

For the Elbe

Czechoslovakia - Stones raised at Bodenbach (Podmokly). Dredging at Kleceny (Klecan), Melnik, Laube (Loubi). Protection of banks at Podbaba. Repairs on existing works at Roudnice, Melnik.
Germany - Dredging at entrance of port of Dresden, Mühlberg, at mouth of "Alte Elbe". Raising of stones from river. Protection of banks above Mecklenburg, Ochsenwärder, Blankensee. Upkeep of lighthouses and markers.

Apart from works concerning flood control, works of improvement are defined in the Convention between Czechoslovakia and Austria of 1928 as work on the normal water channel, work on the low-state channel, and dredging for regularization purposes. Such works include the building of dykes, dams, and revetments, and canalization.

Typical works of improvement in the interwar period were:

For the Rhine

1. Regularization project between Basel and Strasbourg, including a canal at Kembs. The Commission laid down measures for the executing States in order to protect navigation during the construction period, as well as specific directions for the construction work itself.
2. Changes in the river banks at Strasbourg, increasing the size of the entrance to the port.
3. Creation of refuge-ports in the "Gebirgsstrecke" and elsewhere.

For the Danube (International Commission)

No general program of works established by the Commission, but many regularization projects

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presented and approved. Among those completed were:

1. Kaposztasmegyer - dredging, and the construction of a longitudinal dyke.
2. Between Regensburg and Jochenstein - partial canalization, and the construction of a hydroelectric plant to use the power.
3. Oil loading quay near Almasfugito.

For the Elbe

No general program of works established by the Commissiong. Among the projects completed:

1. Regularization by a longitudinal dyke at the Schlossheger.
2. Regularization at Tangermünde, Domitz, etc.

Typical works which might constitute potential obstacles to navigation were, for the interwar period:

For the Rhine

1. Rectification of bridge at Düsseldorf to prevent accidents.
2. New bridges between Cologne and Mülheim, and Düsseldorf and Neuss.
3. Raising of bridges at Strasbourg-Kehl and at Huningue, both endangering or restricting navigation.

For the Danube (International Commission)

1. Dimensions for opening of highway and railroad bridge between Belgrade and Pancevo increased.
2. Dykes for flood control and drainage between the mouths of the Isker and the Vid to gain arable land for refugees.

A plan to pipe water from the Lech to supply the projected Rhine-Danube Canal was turned down by the Commission, because it would increase the number of days during which the river was not deep enough for navigation.

For the Elbe

1. Dam near Strekov (Masaryk Dam) for regularization, flood control, hydroelectric power.
2. Flood control dyke at Troja.
3. Reconstruction and enlargement of old bridge at Magdeburg, which had been a permanent obstacle to navigation.

ii. Supervision of the Waterways. Supervision of the waterways was one of the chief reasons for the establishment of commissions on international rivers.

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Each commission is authorized to supervise conditions of navigation in order to ensure the free use of the waterway. This duty includes all matters, large or small, pertaining to navigation.

(1) The Rhine. The Convention of Mannheim in 1868 has provided that from time to time a Commission of Engineers should examine the technical condition of the waterway, and make suggestions for conservation and improvement to the riparian States and the Central Commission. Periodic "voyages of exploration" were made up to the time of World War I under the direction of the Commission, and full reports were published, upon which the Commission based its suggestions to the riparian States. During the interwar period, such voyages were made in 1924, 1929, and 1934, resulting in full reports and the amelioration of many bad conditions.

(2) The Danube. The International Commission of the Danube is to watch that no obstacle be put in the way of free navigation on the waterway, or disturb the use of ports or their installations. No particular effort was made by the Commission to secure independent information on these points. Reports made by the riparians were used, for the most part, as a means of checking on conditions.

(3) The Elbe. The Elbe Commission is empowered to supervise conservation of the freedom of navigation, maintenance in good order of the navigable channel, and improvement of that channel. It is further provided in the Navigation Statute of 1922 that the Commission "would secure that all inspections and inquiries which it judges useful for that purpose" be made.

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iii. International Execution of Public Works

(1) European Danube Commission. The outstanding example of international execution of public works is furnished by the work of the European Commission of the Danube, established by the Treaty of Paris, 1856, and maintained in all later treaties. This body itself planned and carried out all maintenance and improvement on the section of the river under its jurisdiction, in complete independence of territorial authorities.

Examples of works carried out in the interwar period were:

Maintenance

1. 1919-1921 - dredging work to clear mouth of shoals formed during the war period when no work was done. 24 ft. depth regained for 83 days in 1921.
2. Ice breaking work each winter to keep river mouth as open as possible to ocean-going traffic.

Improvement

1. Extensive works carried out at the Sulina mouth throughout period to establish a permanent 24 ft. depth. This included extensive dredging operations and extension of the dykes some distance into the open sea.
2. The possibility of sinking a dam to the north of the Sulina channel to divert silt from the Stamboul mouth of the Kilia Branch was discussed but postponed.

The Commission, having full control over the Danube mouth, necessarily had the duty of supervision. This was entrusted to two agents; the Inspector of the Lower Danube and the Captain of the Port of Sulina, who were officials of the Commission and acted in its name.

(2) Iron Gates Service. Another body having special powers in regard to public works, though not nearly so great as the European Commission of the Danube, is the Special Commission set up for the

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section of the Iron Gates and the Cataracts, and representing the two riparians and the International Commission. This Commission has power to establish both upkeep and improvement measures, as well as administrative measures, subject to examination by the International Commission. This body has partial powers of execution. It, too, is expressly endowed with the duty of supervision in this sector, and, under the Agreement of 1932 between the Riparians and the Commission, this duty is carried out by agents of the Special Commission.

(3) Special Agreements. In all cases where the section of the river upon which work is to be done is divided by a frontier, or frontiers, an agreement between the States concerned, subject to the approval of the commission, is required. In case the States cannot agree, the commission is empowered to settle the terms of the agreement itself; or, if all provisions are not acceptable to the commission that body can make such changes as it finds necessary. Many such agreements have been drawn up.

Under the Peace Treaties, France, Belgium, Switzerland, Rumania, Czechoslovakia, and Yugoslavia were given certain special rights, as against Germany, Austria and Hungary, in connection with works of maintenance and improvement of navigation and works in furtherance of special economic interests. When such rights are exercised, the measures taken are subject to the approval of the commission concerned.

2. Operational

a. Regulations for Police of Navigation. The distinction between the duties of riparian States and the powers of a river commission is less clear-cut in

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regard to regulations for police of navigation than in any other matter. If a river commission exists, it will make -- or at least draw up -- such regulations. If no such body exists, the principles of Vienna provide that the riparian States shall do so by common agreement. Thus, in the interests of uniformity, cooperation is required whether or not a special, permanent organization is provided.

i. Distinction Between River Police and General Police. The distinction that needs to be made here is that between regulations for police of navigation[1] and those for general police. The policing of navigation seems to coincide with the sphere of the professional activities of people engaged in navigation (as defined in Section V). Its primary field is, of course, actual physical navigation on the fairway itself, but included in it are matters arising from the exercise of navigation in ports, and even from navigation in the broader sense of the word. There is, however, little evidence that the river commissions normally concerned themselves with the last.

General policing, on the other hand, may be said to include whatever falls within the wide field of the police power of a State, other than police of navigation. This may -- in such cases as manslaughter through gross negligence in the event of collision -- lead to an act being punishable both as a violation of police of navigation regulations, and of general penal law.

ii. Development of the Distinction. In the texts of the Congress of Vienna, reference was made to the regulation of "all that concerned navigation", thus

1. On the maritime Danube, there is a special terminology, Regulations for Navigation and Police. In practice, there seems to be no substantial difference.

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including without distinction both police of navigation in the broadest sense and matters of general police. The Rhine tradition, as expressed in the Conventions of both Mainz and Mannheim, limited police of navigation to matters of security, and did not specifically refer to general police. In the twentieth century, the widening scope of police powers over navigation has been discernible, for example, in rules determining the composition of crews or providing for public health measures concerning drinking water. The end of the World War found this distinction between police of navigation and general police well-established. Even on the river itself general police powers, broadened to include matters of welfare as well as of security, have come to cover a much wider field than in the past.

iii. Growth of General Police Power at the Expense of Navigation Police Power. The Barcelona Statute provides that river commissions on which non-riparian States are represented shall draw up the necessary regulations for police of navigation, that all other regulations shall be communicated to them, and that State regulations concerning general police shall not impede navigation "without good reason". In view of growing State intervention, the principle of Barcelona appears inadequate.

In this respect the Elbe Statute closely follows the Barcelona principle, and breaks with European tradition of the priority of navigation. The Commission is authorized to draft regulations for river police, the States to make regulations for general policing that "must not hinder, without reason, the free exercise of navigation". The Danube Statute authorizes the International Commission to make

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necessary police regulations for the waterway under its jurisdiction, while general policing is reserved in the following Article to the riparian States, limited only by an injunction preserving the principle of free navigation. This allows a broad exercise of power by the States, but the limitation is somewhat greater than that stated in the Barcelona Convention.

The Rhine Modus Vivendi follows the distinction between police of navigation and other police. However, except for measures taken as a result of multilateral conventions to which all contracting States are parties, measures of police must be limited to health or general security -- this is very restrictive -- and may not hinder unnecessarily freedom of navigation. Inequalities of treatment that may result from such police measures are limited to stated "derogations".[1]

iv. Distinction in Actual Practice Between Port and River Police. Until recently, there has been no clear-cut principle on the relationship between port and river policing. The river regimes show very different points of view, and divergent theories are even to be found on a single river. On the Rhine, for example, the Prussians maintained that regulations established by common agreement did not apply to ports insofar as ports were not part of the fairway. Before 1919, at least, the other German States held the view that general regulations applied within the ports to their full extent, although they could be supplemented by national or local regulations -- the international regulations prevailing in cases of contradiction or doubtful interpretation -- and derogations demanded by local conditions were permitted. The Prussian

1. See Section VIII B 2 a vi.

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regulations for ports included all the provisions of the Regulations for Navigation and Police that they considered applicable. Baden and Bavaria, on the other hand, considered local regulations to be supplementary to the Regulations for Navigation and Police.

On the Danube, the European Commission remained generally inactive in ports except for Sulina. The Rumanian Government developed the theory that the distinction between port and river was a geographical one, and hence that ports must be treated separately. This view found some support in the structure of the Regulations for Navigation and Police for the Maritime Danube. These made a geographical distinction between the port of Sulina and the river itself; a distinction which, for purposes of internal administration, was convenient and clear.

The definite pronouncement of the Permanent Court of International Justice in the Danube case settled the conflict of views to all practical purposes. The Court said, "The international instruments, from the Treaty of Paris onwards, do not specially relate to the navigable channel or the ports; they deal with the navigation of the Danube, of which both the channel and the ports are essential features." This seems to have established finally a clear-cut principle, which was accepted by all in the drafting of Art. 38 of the Rhine Modus Vivendi. "Each riparian State shall ensure that the local regulations of the port police decreed in its ports shall only derogate from the general regulations of the river police to an extent required to meet local conditions."

The general structure of the Danube Act proceeds from the conception that, within the ports, the

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duties of riparian States are limited to what is expressly stated concerning them.

The prevailing conception on the Elbe is the Prussian one: that river regulations apply to ports only insofar as ports are part of the fairway.

v. Roles of the Commission and of the States in Drawing up Regulations. Regulations for police of navigation when passed by a commission are put into force by national enactment. On the Rhine, however, there are again divergent views: one, the general principle stated above; the other, that Art. 32 of Mannheim was executory, and that regulations of common concern, if duly published, become obligatory by their own force.[1] The Regulations for Navigation and Police on the maritime Danube were drawn up and put into force by the European Commission. Necessary routine police regulations were made by the competent agents of the Commission, subject to the subsequent approval of the Commission.

vi. Typical Examples of Regulations for Police of Navigation

For the Rhine

1. Rules of the road, including signalling and special rules concerning the Kembs canal, constituting the Regulations for Police of Navigation as revised in 1938.
2. Rules on certificate of capacity of the Masters.
3. Rules concerning minimum crews.
4. Regulations of maximum numbers of passengers on passenger vessels.
5. Rules on seaworthiness -- concerning investigations to determine the aptitude of vessels for Rhine navigation.
6. Rules for the control of boilers.

1. By virtue of the Additional Protocol of Adherence by the Netherlands, no regulation of common concern could become obligatory in a State which refused to approve it. Majority rule is unconditional on both the Danube and the Elbe.

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7. Special rules for transportation of inflammable goods other than explosives. (The former rules on the transport of explosives were allowed to lapse in the interwar period.)
8. Special rules for transportation of corrosive and poisonous goods.
9. Rules concerning drinking water on the Rhine.
10. Special rules for navigation by oil tankers.

For the Danube

1. General Regulations put into force in 1936.
2. General police regulations of the States, examined individually and approved by the Commission.
3. Uniform rules for vessels transporting inflammable materials drafted by the Commission.

For the Elbe

1. General Regulations finally adopted in 1932, and put into force by State acts in 1933.
2. Supplementary regulations by the States.
   a. Maximum speed on given sections.
   b. Details of navigation permits.
   c. Security measures.
3. Regulations drafted by the Commission.
   a. Conditions of security for boats navigating on the Elbe.
   b. Navigation permits.

vii. Derogations. The power of river commissions to grant derogations in individual cases depends on the legal conditions governing the relationship between the individual and the commission. Some States have maintained that river commissions could deal only with the States, and that the impact of a commission's decisions on the individual could be felt only through the action of the State. This would hardly be compatible with the right of individuals to appeal to the commissions, or even with that of presenting complaints to them. The same inconsistency would seem to apply to the power to grant derogations. Most river commissions, however, have not exercised that power; only the European Danube Commission and the Rhine Commission have done so. Under the regulations concerning minimum crews, the Rhine Commission is competent to make adjustments in individual cases, taking into

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account the mode of construction and the facilities of the vessel. This type of power is maintained by the Rhine Modus Vivendi.

b. Establishment and Mode of Operation of Public Services such as Pilotage, Towage, etc. Operations of navigation undertaken as a public service, "service public d'exploitation", include such services as pilotage, towage, storage, and crane service. Services such as the operation of a lock, signalling, dredging, police of navigation, telephone and telegraphy are of a different nature: they are either connected with the equipment of a waterway, or required for the purpose of ensuring orderly operations on it. A sharp distinction is made here between the fairway and the port. The distinction between the duties of the States and the powers of a river commission is of lesser importance.

i. On the Fairway. In general, operations of navigation are not undertaken as a public service on the fairways of international waterways. Where such services do exist, they cannot be monopolies or compulsory or both. On the Rhine, for example, there can be no monopolies or compulsory public services of this kind on the fairway, unless they are provided for either by a treaty, or by a unanimous decision of the Commission. The only general exception to this is maritime pilotage, which is usually compulsory.

(1) Maritime Pilotage. Compulsory pilotage exists on the maritime Danube, the maritime Scheldt, the Elbe below Hamburg-Harburg, the Nieuwe Waterweg, etc. General principles applied to it are: there shall be no discrimination as to flag; dues are not to exceed a fair remuneration for the service; pilots are not allowed to accept gratuities; the pilot acts in an

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advisory capacity only, and the captain of the vessel remains responsible, even "if the Captain leaves the direction of his vessel to the pilot." Where access to and from the river may be had by several channels, the choice is the captain's. Where the same waterway serves the maritime ports of two countries, each of which maintains a pilot service, either the captain is free to choose between the two services, or the pilots of each country serve its own ports. The first of these two solutions was adopted for the Schelde by the Powers in 1839. By the draft treaty of 1926, it was maintained for downstream traffic on the Wester Schelde. The second solution was adopted for upstream traffic but only for the main access, that of the Wielingen Channel; for secondary channels leading to and from the North Sea and the Baltic, it was provided that only Dutch pilots could be taken by vessels going to Dutch ports. On the Danube, the question is left to general principles. On the Elbe, there is nothing to prevent such services being established.

(2) Pilotage above the Head of Maritime Navigation. From the point at which sea-going vessels -- except those especially constructed for mixed navigation -- must stop, compulsory pilotage is generally forbidden. The pilotage service established at the Iron Gates section of the Danube is the only case of compulsory service in inland navigation proper. On this section, towage is also provided as a public service by the Commission, but the service is not compulsory.[1]

ii. In the Ports. In the ports, no limitation exists against monopolies in public services, or

1. A specially built vessel, the Vaskapu, was still in operation in 1942. Towage by traction locomotives has been developed to supplement the service of Vaskapu.

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against making their use compulsory. The right to decide questions concerning the establishment and operations of such services belongs to the State. The number and types of services are at the discretion of the State. They may be monopolies or compulsory or both, provided the character of the service does not hinder navigation or result in prohibited discriminations. On the other hand, there are limitations on private appropriation of port equipment, berthing space, and storehouses. The Rhine Modus Vivendi says "Regulations governing the conditions attaching to the concession and working of private storehouses ... must respect the principles of freedom of navigation and equality of treatment". The principle is substantially the same for the Danube and the Elbe.

iii. Examples of the Work of Commissions Connected with Public Services

For the Rhine

1. Receipt of complaint that differential pilot dues charged at St. Goar by French occupation authorities gave preferential treatment to French nationals.

For the Danube

1. Group of regulations drawn up governing pilotage at the Iron Gates.

For the Elbe

1. Approval of pilotage regulation drawn up by Czechoslovakia.
2. Receipt of complaint on the exercise of pilotage: users of service wanted not to have to change pilots at the border.

c. Supervision over the Application of Regulations for Police of Navigation and Public Services on the Fairway and in the Ports of the Waterway

i. Duty of the Riparian States. The primary responsibility for supervision over the application of police regulations and public services on the fairway and in the ports rests with the States, except where the State is divested of its responsibility because

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the police and the public services are themselves internationalized, as in the case of the European Danube Commission.

ii. Powers of the River Commission. On the other hand, the power of supervision is clearly implied in a river commission's responsibility to maintain the principle of free navigation on the waterway, which is basic to the existence of all such commissions. The river Statutes present several systems enabling the commission to fulfill this obligation. The Mannheim Convention provided for a staff of Inspectors working under the authority of the Commission, whose duty it was to watch over all activities, reporting offenses to the proper national authorities as well as to the Commission. After the abolition of the office of Inspector-General, the Inspectorate lost all importance, and was finally abolished by the Modus Vivendi. Periodic voyages, organized by the Commission, were primarily to facilitate the inspection of technical matters, but, in practice, much information was obtained on other matters, particularly on those concerning ports. The Danube Statute, in outlining the internal organization of the Commission, specifically provides a navigation service. The existence of such a department necessarily implies supervisory activities. It is further provided that the functionaries of the department are to be provided with all necessary facilities for the performance of their duties, and can circulate freely on the river and in the ports. The Elbe Statute expressly provides that the Commission may institute all enquiries and inspections it considers useful. All necessary inspections to determine conditions on the river and in the ports are, therefore, to be made at

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the discretion of the Commission and for whatever purpose the Commission chooses.

d. International Policing of the Waterway, or of Ports, and Maintenance of International Public Services, where Provided for by Treaty or Agreement, the Maritime Danube

i. Policing. The European Danube Commission divided responsibility for policing and control of the waterway and public services between the Inspector of Navigation for the Lower Danube and the Captain of the Port of Sulina: the Inspector was in charge of the river above Sulina, the Captain of the Port controlled Suline and the channel to the sea. They were responsible for application of the Regulations, and exercised their power over all flags equally. They acted as judges of first instance in penal cases arising under these Regulations. No police power could be exercised within the section of the river controlled by the Commission, unless authorized by competent agents of the Commission. They alone had power to stop vessels which had committed an offense punishable under the Regulations, or which, under certain conditions, were suspected of having done so. Complaints concerning the decisions of these officials could be carried before the Commission, which was the final authority in all cases.

ii. Derogations. Derogations made in individual cases were the sole responsibility of the Commission and its agents.

iii. Public Services. Public Services (d'exploitation) on the fairway of the maritime Danube were a monopoly of the Commission. They were placed under the two officials named above. A dual pilotage service was maintained for the river and for the

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entrance to Sulina, respectively. Rules concerning the use of pilots by vessels navigating the river, the organization of the service, and the charges to be made for its use were laid down by the Commission, and applied by its officials. The organization and operation of other such public services were also defined and controlled by the Commission, independently of any territorial authority. All rules governing such a service, as well as difficulties arising under its operation were matters solely for the decision of the Commission or its competent agents.

3. Traffic

a. Collection and Dissemination of Information by the Commissions

1. Coordination of Traffic Statistics. The coordination of statistics for a waterways system as a whole is obviously beyond the competence of any one of the riparian States. Statistical information, in general, is gathered and published by riparian authorities in the course of their duties with regard to inland navigation and commerce, and is transmitted to the commission. It is made available to those using the river. However, the method of compiling statistics differs in the several States, and the statistics for various sections of a river are likely not to be comparable. It is the duty of a commission to secure the adoption of a uniform system, or, at least, to ensure comparability as far as possible.

It was early recognized by the Central Commission that the best system on the Rhine was that followed by Germany, which divides the national territory into a large number of districts and lists the movement of goods among these districts, and between each of them

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and foreign countries. If this system were generalized, and movements were listed in international traffic as they are in internal traffic -- i.e., between districts, on the basis of a unified classification of commodities -- an adequate picture would be available. This system was adopted by the League of Nations; approval by experts of its general use for inland navigation, maritime navigation, and railway traffic was secured, and a draft convention was prepared. The completion of this task coincided in time with the outbreak of the economic crisis, which resulted in postponement of its adoption. In the meantime, the Commission ensured comparability between its statistics and those of the Reich, and secured from Switzerland, France, the Netherlands and Belgium frontier traffic data which enabled it to extend its statistics to all the main ports of the Rhine waterways system.

Similar efforts for the Danube and the Elbe failed.

ii. Compilation and Publication. In the course of their activities with regard to the annual report (required by the Rhine and the Elbe Acts, and implied in the existence of a river commission in any case), the river commissions acquire a great deal of information. As much of this as is necessary for giving a general picture of developments on a river is published in the annual report. In addition, current information on its activities is published by the commission, either in a special publication, or in existing publications selected by the commission for that purpose.

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iii. Examples of Informational Activities:

For the Rhine

1. The Control Commission publishes an annual report covering hydrotechnical, navigational, economic, social, administrative, and judicial data.
2. It publishes current information on its activities in selected technical periodicals published in each of the riparian States.
3. The Commission published in 1918 the Rheinurkunden-Rijndocumenten, a compilation of treaties, agreements and regulations concerning the Rhine.
4. A history of its activities since 1815 by Professor W. Van Eysinga, one of the members of the Commission, was published in 1935.
5. The Commission published a digest of its decisions in penal, administrative, and civil matters by von Traut, one of its members. A revised edition was prepared toward the end of the 1930's.

For the Danube

1. The International Commission published an annual report for several years.
2. The Commission published a periodic hydrometric bulletin.
3. The Commission provided buoyage information.
4. The European Commission published an annual report during most of the years between the wars, and in 1931 a volume outlining its activities from 1856-1930.
5. The European Commission published a bi-monthly report through the Office of the Secretary-General, containing navigation information and traffic statistics.

For the Elbe

1. Statistics were published in an annual report. They were gathered by the States, and no effort was made to coordinate them.

b. Interference with Traffic by Customs, Health, or other Authorities

1. General Principles Governing Customs

(1) Introduction. There are two parts to a customs regime: one, duties, restrictions and prohibitions on the movement of goods; the other, formalities or rules of procedure governing the application of the regime. Included in duties are not only customs duties, but also consumption taxes or excises and, sometimes local dues or octroi. The principle of freedom of navigation naturally implies that there shall be no customs duties, restrictions or prohibitions in regard to the

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ship itself. In general, spare parts, provisions for passengers and crew, fuel oil, and lubricants are considered for this purpose as part of the ship. However, in the Rhine Modus Vivendi, for example, the foregoing exemptions are narrowly limited by the fact that they may come in or go out only on the ship concerned, and stringent quantitative limits are set on provisions and liquid fuel.

The principle of freedom of navigation implies freedom of transit, which means freedom from customs duties, restrictions, and prohibitions on goods passing through a country. Thus, any goods may pass through a State on an international waterway, with or without transshipment, regardless of national laws as long as the goods are not of such a nature that transit in itself may endanger the country (for example, diseased plants or animals), or that transit may be claimed to be contrary to the general interest (for example, transit of narcotic drugs, except where the traffic is permitted under general conventions).

(2) Flag Discrimination. The Barcelona Statute expressly declares that there shall be no discriminations made on account of the flag. The Danube Statute also contains such an express provision. The Rhine Modus Vivendi arrives at the same result as do the Barcelona Statute and the Danube Act, but by a different method. It expressly recognizes customs as outside the principle of equality of treatment and within the national powers of the State, but limits those powers by providing that "there shall be no discrimination on account of the flag, or of the place of registration of the vessel". The Elbe Statute has no express provision dealing with customs discriminations.

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(3) Discrimination Based on the Itinerary of the Goods. It is a general principle that goods of the same kind, having the same origin or destination, must receive equal treatment. The origin of this provision can be traced to Art. 6 of the Mannheim Convention, and it is found in the other Statutes. The statement in the Rhine Modus Vivendi is more logical: "there shall be no discrimination against goods entering or leaving the same territory by other modes of transportation or another waterway".[1]

(4) The French Surtax. When the regularization of the Rhine between Mannheim and Strasbourg was completed and, in 1918, Strasbourg became French again, the French surtax presented an especial problem. This is a special duty levied on goods entering France indirectly (otherwise than "on droiture"). It applied in a three-fold way. First, the "surtaxe d'entrepôt" was levied on almost all extra-European goods imported into France after transshipment in Europe anywhere outside France, regardless of whether or not the transshipment took place in a port which had French territory in its hinterland. Second, the "surtaxe d'origine" was levied on most European products which did not reach France without transshipment outside France. Exemptions were granted in the case of countries whose goods could not reach France without transshipment; for example, Czechoslovakian goods would not be liable to the tax if they passed through Hamburg. Third, goods imported into or exported from continental France, the origin or destination of which was another part of the French empire, lost the benefit of the exemption or

1. The word "Rhine" in the Convention of Mannheim does not apply to the waters below Gorinchem and Krimpen, and in particular to the Netherlands maritime ports.

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reduction in customs duties they were otherwise entitled to, if they passed through a foreign port. If this system had been maintained in its entirety after Alsace and part of Lorraine became French again, Strasbourg could not have developed into an important Rhine port. Further, Belgian ports would have been in a less favorable position than they were before a victory to which Belgium's resistance had contributed. Exemptions were, therefore, granted on account of transshipment outside France but only at Belgian, not at Dutch ports. These exemptions ultimately covered all three cases for water traffic to Strasbourg, and for railroad traffic to Alsace-Lorraine via Antwerp or Ghent.

The Rhine Modus Vivendi was so drafted as to exclude the French surtax and similar duties. Section 3, Art. 9, stipulates that "there shall be no discrimination by reason of the use of the navigable waterway and the ports of the Rhine," providing, in particular, that neither transshipment nor deposit in warehouses shall in any way affect the treatment of the goods, and that goods may not be subjected to any special treatment by reason of their passage through any part of the waterway. The application of these provisions depended, however, on the definition of "Rhine".[1]

(5) Facilities. The general principle regarding facilities, as stated in the Barcelona and Elbe Statutes, is based on the Mannheim Convention, Art. 14: "all facilities which might be accorded by the contracting states on other land or water routes for import, export, and transit of goods will equally be conceded to import, export, and transit on the

1. See footnote to previous page and Belgo-Dutch-French Agreement of 1939, Section IV E.

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Rhine." This principle might be interpreted as dealing only with customs formalities and other similar matters, such as those of health control, which would arise in connection with the passage of a frontier. To remove such doubts, the wording was amended in the Rhine Modus Vivendi, "facilities granted for every kind of transportation by whatever route" being added in order to cover, for example, railway tariffs and navigation dues on feeders of the Rhine. For the same reason, "on the Rhine" was replaced by "in respect of the navigation of the Rhine".

(6) Other Border Authorities. Provisions analogous to those regarding customs and facilities should apply to immigration, emigration, etc. However, such an extension has not been worked out due to lack of practical importance.

ii. General Provisions Safeguarding Public Health. Article 6 of the Barcelona Statute states that health measures, including those dealing with protection against plant and animal disease, must be applied on a basis of absolute equality among the nationals, property, and flags of any of the contracting States. The Rhine Modus Vivendi declares in general terms that the only discriminations permissible on the ground of protection against human disease are those based on provenience.[1] Diseased plants and animals may be barred on the basis of place of origin or production. Measures to prevent the spread of contagious diseases, especially those applied to the movements of crew and passengers and to

1. Provenience (provenance), as distinguished from origin, indicates the last place from which goods or persons have been transported. For example, in the case of Brazilian coffee stored at Le Havre and then shipped to Basel, Le Havre will be considered as the place of provenience, Brazil as the place of origin.

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the employment on land of those connected with navigation, must not unnecessarily hinder free navigation. Lastly, the Modus Vivendi expressly permits discriminations based on general treaties to which all the contracting States are parties. There have been some bilateral conventions based on the Model Convention for Public Health on Inland Waterways established by the League of Nations, which, if widely adopted, would be an acceptable basis for a general treaty. The Danube and Elbe Statutes do not deal with this subject.

iii. General Principles Protecting Public Safety. For the maintenance of public safety, persons may be discriminated against by virtue of nationality, origin, provenience, or destination. They may not be discriminated against on the basis of the flag or registration of the vessel transporting them. These provisions apply chiefly to immigration, emigration, sojourn, and passports. Such measures must not constitute interference with navigation, or be taken without valid reason.

iv. Formalities. The specific provisions of the Barcelona Statute in regard to customs formalities are limited to transit without transshipment. For transit with transshipment, the general rules on freedom of transit in the Statute of Barcelona are to govern such formalities. For import and export, no international rules are provided. Art. 15 of the Vienna Act states that customs authorities should be confined in their operations to the banks of the river. On the sections where the waterway forms the boundary this principle has been generally followed. Gradually, international rivers where both banks are held by one State have been included in the customs territory.

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"Free ports" -- originally ports outside the customs territory -- have been provided, where goods can be stored in public warehouses free of duty. The Barcelona Statute allows only a summary inspection by customs authorities, and authorizes either placing of the cargo under seal or placing of a guard on board the vessel. In the latter case, the ship cannot be made responsible for contraventions of the customs regulations, but has to provide for board and lodging of the guard.

The Danube and the Elbe Statutes are very similar to that of Barcelona. The Elbe Statute, however, also deals specifically with indirect transit, and contains much more detailed provisions. The provisions in the Rhine Modus Vivendi are entirely different. They do not revert to the principle in the Vienna Treaty, which would have been too rigid to protect freedom of navigation in ports. Unhampered navigational operations and freedom in the commercial disposition of goods are secured through flexibility of customs procedures, by using the most advanced customs technique, and through international cooperation among customs authorities.

An International Rhine Document covers all operations of import, export, and transit, including transshipment and warehousing. A special Convention is provided for mutual recognition of customs seals among all signatories, open to adherence by nonsignatories. Once the customs seal is affixed, there is no examination whatever of the cargo space at any frontier, but only of the seal itself. If the cargo is not under seal, it must be under the supervision of preventive officers. If the cargo is sealed, such an officer may be placed on board only in cases "where the nature of the cargo demands it and in exceptional circumstances".

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There are no formalities allowed where the waterway forms the boundary,[1] except in ports or when requested by the captain of the vessel in the case of transhipment in the fairway. The Rhine system is thus more inclusive than that for the Danube or the Elbe. The Rhine Modus Vivendi accepts the right of customs officials to see all documents, while on the Danube and the Elbe inspection of the manifest is not permitted.

v. Examples of Complaints Regarding Customs, etc. Dealt with by the Commissions:

For the Rhine

1. Complaint by the Netherlands relative to the complicated customs formalities on the Prussian frontier imposed by the Armies of Occupation.
2. Complaint by French and Belgian interests that the German practice of breaking customs seals, checking cargo, and resealing constituted a real hindrance to navigation.

For the Elbe

1. Examination of customs agreement between Germany and Czechoslovakia.
2. Complaint by Czechoslovakia on German measures regarding Czechoslovakians employed in navigation in Germany.

c. Dues, Illegal Charges, or Other Measures Illegally Restricting Free Navigation

1. Introduction. In general, dues may be divided into those levied on the fairway (dues of navigation, charges for locks, for opening and closing bridges), those levied in the ports (charges for the use of facilities, including use of the port itself), and taxes on income derived from navigation and other taxes of a similar nature, generally classified as personal taxes. Before the Vienna Treaty, 1815, there were even dues levied when a vessel did not use a certain port or harbor (droits de relâche et d'échelle).

1. Except at Lobith, where the Dutch customs office is located on the small sector of the river that forms the boundary.

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ii. Dues on the Fairway. The Mannheim Convention declared that there were to be no dues based solely on the fact of navigation. However, charges for the use of artificial waterways, or works such as locks on a natural waterway were considered legitimate. This meant that the dues once levied for buoys and beacons could not be reestablished on the fluvial Rhine. Special dues for buoys and beacons had previously been abolished on the maritime access to the Rhine, and also on the Wester Schelde. Dues to defray the cost of the service of signalmen, quite extensive in the "Gebirgstrede" -- the part of the Rhine between Mainz and Koblenz -- continued to be levied under the Convention of Mannheim. Abolition of dues on bridges was found to be desirable everywhere, but was stipulated only for the Rhine itself above Gorinchem and Krimpen. The change in the German Constitution in 1911, which has been referred to above, reintroduced dues to cover the cost of maintenance and improvement of the waterway, and expenses incurred in its administration. This did not apply to the Rhine except for a short period during the World War, and was abolished for the Elbe in 1920.

The Barcelona Statute makes possible, without distinction between natural and artificial waterways, dues in the nature of payment for services rendered, based solely on the cost of maintenance and improvement of the navigable waterway, and other expenses incurred by the State in the interests of navigation. This principle was adopted in the Danube Act for large-scale improvement works, and in the Elbe Act for exceptional circumstances. In no case is the collection of such dues to present an interference with navigation. When the Kembs Canal was built as a

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substitute for the Rhine, on a small sector below Basel, France undertook not to levy dues for its use or that of the locks which are part of it. The Rhine Modus Vivendi no longer permits dues on canals, locks or bridges; charges for the service of signalmen would be equally illegal under it.

iii. In the Ports. The Convention of Mainz in 1831 precisely enumerated and limited the amount of permissible port charges. Since then, the provisions for port charges have become much more flexible. The charges, however, remain subject to judicial review by the Central Commission.

At present the basic European principle in regard to charges for port facilities is that stated in the Rhine Modus Vivendi. "Special charges reasonable in amount, may be levied to cover entirely or in part the expenses of the port authorities for the upkeep and management of ports, including the cost of supervision. The tariff must be made public and these charges cannot be levied except insofar as the works, installations, and services, for the use of which they have been fixed, have actually been utilized, and in no case may these charges constitute a benefit for the port authorities." This applies to all ports open to traffic.

iv. Taxes. The distinction between permissible and nonpermissible taxes is difficult and may, perhaps, best be shown by examples. Taxes not permitted include a stamp on bills of lading or charter parties, a levy on the gross earnings of navigation companies, a tax on the amount of freight payable by shipper or consignee, a tax on floor space or cubic space of a warehouse, or a tax on exercise of the profession of skipper, even if such a tax is not peculiar

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to that profession. It is to be noted that some of these taxes have been levied in fact without the question becoming internationally acute, because the levies were of very small amounts. Taxes that are permitted are a tax on the net income of navigation companies or forwarding agents or warehousing companies, a general tax on landed property, a tax on the sale of a vessel, and similar taxes. The provision in the Rhine Modus Vivendi is the one now generally accepted. "The navigation of the Rhine shall not, as such, be subject to any taxes or dues of any kind or method of assessment." With respect to double taxation, there was general agreement in the Central Commission on the principle recommended by the League of Nations experts in the case of shipping concerns: namely, that taxes are to be levied only in the country where the real center of management is located. This principle was not put into the Modus Vivendi,[1] which merely states that "the contracting States agree to avoid double taxation on concerns engaged in the navigation of the Rhine", leaving the whole matter to bilateral agreements.

v. Roles of the States and the Commissions in Regard to Dues

(1) Duties of Riparian States. A riparian State is responsible, in general, for fixing the tariffs and for bringing them to the attention of those concerned, usually by posting them in the ports. Collection of charges for public services, for the use of port installations and facilities, and, of course, of taxes such as income taxes, is made by the State.

(2) Powers of the River Commissions. In addition to the judicial powers vested in the Rhine and

1. See Section IV D 1.

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European Danube Commissions, it is clearly the duty of any river commission to review all dues levied on the river, to watch over their collection, and to investigate all complaints dealing with preferential or otherwise illegal charges. Neither Statutes nor practice on international rivers present a modification of this obligation. In addition, the Danube and Elbe Commissions are specifically empowered to provide for special navigation dues imposed for important improvement works when they judge it necessary.

vi. Examples of the Work of the Commissions with Regard to Dues

For the Rhine

1. On complaint by the Netherlands that the French authorities were collecting illegal dues on goods for the purpose of statistics, the Commission immediately stopped the practice.
2. The Commission studied the question of the collection of dues on passport visas for navigators, in an effort to get all the riparian States to agree to their suppression.

For the Danube

1. The International Commission discussed the exemption from levies on pontoon bridges made by some of the riparian States.

d. Flag Discrimination

i. The General Principle. The 19th century witnessed a gradual extension of the principle of equality of all flags. By the middle of the century, it was generally accepted in Europe that navigation on international waterways should be free to all flags without distinction. Certain countries -- for instance, Belgium, the Netherlands, and Germany -- had gone further and applied the principle of equality to all inland waterways. Legally, however, equality rested on precarious and inadequate grounds. Thus, the status of the Danube above Braila remained obscure, and the Convention of Mannheim maintained, at least

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theoretically, certain privileges for the flags of those States that were riparians of the Rhine above Gorinchem and Krimpen. The Peace Treaties proclaimed the principle of equality of flags generally for all European international rivers. It was stated particularly concerning the Rhine that "vessels of all nations and their cargoes shall have the same rights and privileges as those which are granted to vessels belonging to the navigation of the Rhine, and to their cargoes." This was elaborated by Article 4 of the Barcelona Statute. No distinction is to be made among the flags of the different riparian States, including that of the State exercising sovereignty or authority over the portion of the waterway in question; and further, no distinction is to be made between the flags of riparian and nonriparian States. The situation is the same under the Rhine, Danube, and Elbe Acts, and according to the Rhine Modus Vivendi.

ii. Limitations to the General Principle.

Article 5 of the Barcelona Statute, however, contains a novel discrimination, which answers the demands of nationalism. In the absence of a convention or obligation to the contrary, a riparian State of a river system for which there is an international commission on which nonriparian States are represented can reserve to its own flag "the local transport" of passengers or goods which are of national origin or nationalized. It is added that, in every case where greater freedom has been granted by a previous act of navigation (this safeguards the position on the Rhine), this freedom will not be reduced. On other international waterways a riparian State can reserve to its own flag all transport of goods and passengers between

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ports located in its own territory. If such service is not reserved, it can still refuse the benefit of equal treatment to the shipping of States which do so reserve it. This Article had been foreshadowed by Art. 332 of the Versailles Treaty: "German vessels shall not be entitled to carry passengers or goods by regular services between the ports of any Allied or Associated Powers, without special authority from such Powers." This provision was repeated in the other Peace Treaties for the enemy States concerned. However, unequal treatment could not be applied to ex-enemies specifically in a general convention. The solution found was that expressed in Art. 5 of the Barcelona Statute.

The Danube Statute alone adopted the reservation. The Act, in theory limits this reservation to regular traffic: "a regular local service for passengers or for national or nationalized goods between the ports of one and the same State may only be carried out by a vessel under a foreign flag in accordance with the national laws, and in agreement with the authorities of the riparian States concerned." A protocol was added, giving extensive interpretation to the words "regular" and "local service". In practice, the provision results in an almost complete withdrawal of internal traffic by the riparian States, with particularly harmful results to the upper riparian States -- especially Austria with a large fleet and not enough traffic.

e. Unequal or Unfair Treatment of a Waterway in Competition with other Waterways or with other Modes of Transportation, Particularly Railroads

1. The French Surtaxes. The French surtaxes[1]

1. For discussion of these see Section VIII B 3 b i (d).

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and similar devices were resorted to as an effective means of favoring French ports in competition with other maritime ports. The question was repeatedly discussed in the Rhine Commission on complaints from the Dutch delegation.[1] In answer to these complaints, it was pointed out that Art. 14[2] of the Convention of Mannheim, being limited to the "Rhine" as defined in the Convention, did not apply to the maritime ports among which discrimination existed.

ii. Competition with Railroads. The competition between railroads and inland waterways is a general problem. However, it presents very special aspects in the case of the Rhine, where it is complicated by the rivalry between German ports and those of the Low Countries. As early as 1912, the Chamber of Commerce of Antwerp appealed to the solidarity of interests between the ports of the Low Countries and the ports on the Rhine and its affluents. The Treaty of Versailles endeavored to ensure fair treatment to all.

The special maritime port tariffs of the Prussian-Hessian Railroads, which formed the main source of complaint before the first World War, were not revived at first by the German National Railroad. After five years, however, the relevant provisions of the Peace Treaty were allowed to lapse. Soon the policy of special tariffs in favor of the German maritime ports was resumed, while compensatory special tariffs for ports on the German Rhine were often denied,

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1. Owing to the privilege granted by France to Belgium in the traffic to Strasbourg, the Netherlands suffered prejudice on the Rhine. If French traffic is taken as a whole, the system is, however, more of a handicap to Antwerp and Ghent than to Rotterdam and Amsterdam.

2. See customs facilities, Section VIII B 3 b i (a).

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particularly for goods of higher grades. Before this, the National Railroad had adopted a policy of scaling down tariffs according to distance, which restricted the zones within which German inland ports could attract transshipment traffic. Resurgence of the problem as a major issue for the prosperity of the waterway was first emphasized by Walker Hines in a report for the League of Nations on Rhine navigation, in which he also drew attention to French and Belgian railway tariffs. The problem of railway competition was also examined later in a similar report on Danube navigation. The Sub-Committees on Inland Navigation and Transport by Rail of the Technical and Advisory Committee of the OCT decided to investigate these questions. A special committee was formed for this purpose, and a full report was made to the OCT.

The investigation determined that Rhine navigation was being seriously affected by the rate policy of the railroads. In this connection the report stated: "The North German seaports, Hamburg and Bremen, seem to have been made, to an increasing extent, the beneficiaries of a policy of exceedingly low rail rates to attract commerce to these ports. On the other hand, the special rail tariffs which before the war had operated to encourage the movement of traffic through Rhine river ports have been largely discontinued. In addition, the Reich in 1920 introduced a new railway tariff system, which operated to make comparatively low rates for long distances and comparatively high rates for short distances." The situation was further complicated by the low-rate policy of the French and Belgian railroads, designed to attract the traffic from Alsace-Lorraine, the Saar and Switzerland to French or

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Belgian railways and, therefore, to French or Belgian ports, respectively. Their influence on Rhine traffic, however, was of lesser importance.

On the Danube, the investigation found that no serious damage was being done to river shipping at the time by railway competition, although the trend might be potentially harmful. In general, the railroads act as feeders to the Danube River. There was some effort to attract traffic to Trieste by low rail rates, but it was none too successful. The real need seemed to be greater cooperation between river and rail transport facilities to encourage transshipment, and use of the two jointly as traffic developments suggested.

In general, in such a situation, the river commissions found themselves unable to do much. They might and did investigate complaints received and make recommendations to the States responsible. The States, however, were not obligated to recognize these recommendations, and, in fact, the commissions were unable to bring about any change. The situation on the Rhine in particular further deteriorated under the impact of the economic crisis and of National Socialist policies. The investigation did not extend to the Elbe. Competition from the railways and a policy favoring seaports by means of special railway tariffs for seaports but not for river ports cut down bulk commodity traffic, particularly downstream on that river.

iii. Competition on the Waterways. Competition among shipping companies led to the formation of associations for the stabilization of freight rates. The river commissions have no power of control over such associations. No complaint ever arose on the Rhine that these associations enjoyed a de facto

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monopoly. The provision of the Modus Vivendi that the allocation of berths and the concession and mode of operation of private warehouses and other installations or services of the port must respect freedom of navigation and equality of treatment is in the nature of a precaution.

The Elbe Act gives the Commission sufficient powers to prevent abuse, provided the States live up to their commitments. The Danube Act is not so clear in this respect while the need of a safeguard is greatest on that river.

With respect to the small shipowners on the Rhine -- where they represented 53 percent of the fleet --, on the lower Danube, and on the Elbe, competition led to a critical condition at the time of the crisis between 1929 and 1931. Measures which led ultimately to the practical restriction of freedom of navigation for German vessels were taken by the German government for the Elbe and the Oder.[1]

On the Rhine, voluntary cooperation among water carriers helped in some measure to alleviate the crisis. Financial assistance was also needed, and was granted by the German government to its fleet. The Netherlands provided laws which, although not applicable to the main traffic to and from Rotterdam, worked to the same end. A plan for artificially reducing the carrying capacity of all vessels was considered by the Rhine Commission, but failed to be carried out, owing to the refusal of the German Government[1] to accept it.

Compulsory association of water carriers was initiated on the Rhine as a result of National

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1. See Section IV A.

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Socialist policies. To a large extent, barter agreements nullified freedom of navigation as it had been practiced traditionally on the Rhine. It would be difficult to say to what extent this was the unavoidable consequence of growing State control over import and exports, or of National Socialist policies.

f. Discrimination by an International Authority. The problem of discrimination by the Commission or its agents has arisen in connection with the European Danube Commission. Since this Connission was an international body, discriminations were not likely to appear within its jurisdiction. If discriminatory action were taken by one of the Commission's agents, recourse could be had to the commission itself. If such an action were taken in conformity with rules drawn up by the Commission, however, there was no appeal except to the Powers individually, on the ground that the Commission had exceeded its authority.

C. Judicial or Quasi-judicial Activities

1. Judgment on Appeal of Decisions of Navigation Tribunals or other Judicial Organs in Private, Administrative and Penal Matters

a. Organization and Nature of the Tribunals

i. Courts of First Instance. The Congress of Vienna in 1815 laid down basic provisions for navigation tribunals. A special judicial authority was to be established by the riparian States at or near each collection point. Expenses were to be paid by the State in whose territory they were situated, and decisions pronounced in its name. However the individuals making up these tribunals were to observe strictly the Reglements drawn up by the commission for

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the waterway concerned. Judges could be removed only by judicial decision. Procedure was to be fixed by the Règlements. It was to be uniform for the whole river, and as summary as possible. The navigation tribunals are, in a sense, national courts functioning internationally.

Tribunals modelled on the Rhine pattern were set up on the Elbe, with only minor variations to fit local conditions. There were no international arrangements regarding courts on the fluvial Danube. Judicial organization on the maritime Danube remained undeveloped. The police officers formed the lower court. They were chosen, paid, and dismissed by the Commission. They applied the Règlements established by the Commission and made decisions in its name.

ii. Appellate Courts. Navigation cases can be appealed to a higher court. The Congress of Vienna provided for two alternative courts: the national superior tribunal, or the river commission. These courts are bound to apply the Règlements. The choice between the two courts lies with the party appealing the case.

On the maritime Danube there was no alternative for appeals. Appealed cases went to the Commission. A special judicial organ was planned, but never came into effect. Under this plan, cases were to go before a Navigation Court, which was to consist of three members: the President of the Court of Appeal at Galati, a national of a State represented on the European Commission, to be elected by a majority vote of the Commission, and a national of a State not represented on the European Commission, to be elected by an unanimous vote of the Commission. After their

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election, the members were to be formally appointed by the Rumanian Government. Expenses of this court were to be shared by the European Commission and the Rumanian Government. Judgments were to be pronounced in the name of the Head of the Rumanian State, who agreed to represent for this purpose all the contracting States. No similar system materialized on the fluvial Danube. It is merely stated in the Act that the tribunals must be readily accessible to the river, and that the Commission's representatives must be heard in the courts whenever they so request. The Elbe organization is practically identical with that of the Rhine. On neither river system can further recourse be had against a final decision of the courts mentioned above, including the national superior tribunal. This eliminates recourse to Superior Courts, such as the Reichsgericht, the Hooge Raad, and the Cour de Cassation.

Obviously, an international court as outlined in the plan for the Danube would be a more appropriate body to judge appealed cases than the commission itself. Efforts of the Allied delegations to make this change provisionally on the Rhine, pending revision of the Convention of Mannheim, were thwarted by Germany. In the Rhine negotiations, Germany insistently requested suppression of the possibility of appeal from the Rhine courts to the Rhine Commission. As a means of appeasement, this provision was finally granted in the Modus Vivendi against the better judgment of the Commission itself. The same thing was achieved in the draft revision of the Elbe Statute.

b. Jurisdiction. In general, the navigation tribunals were intended by the Congress of Vienna to decide all controversies over matters dealt with in

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the Reglement (Annex 16b of Vienna). This implied a measure of State responsibility for, and judicial control over, the acts of its officials acting in official capacity, far beyond the conceptions of the time. In practice, the States insisted on their sovereignty, and the plan of Vienna was carried out only very imperfectly.

The Convention of Mainz gave the Rhine Navigation Courts jurisdiction over contraventions of international provisions, over all disputes on the amount and payment of the various dues, over complaints about obstacles that individuals might put in the way of use of the tow-paths, over complaints against the proprietors of tow-horses for damage caused to property, and, in general, over all suits for damages caused by the negligence of the navigators during their voyage or while coming alongside.

The civil and administrative jurisdiction granted the courts in the Convention of Mannheim is practically identical to that granted in the Convention of Mainz, except with regard to navigation dues, which were abolished, and except for the inclusion of jurisdiction over pilotage dues. Penal jurisdiction was extended to cover all contraventions of the rules relative to "navigation police and river police" (in the Modus Vivendi, relative to "police of navigation"). The Elbe Statute adopts these principles and adds jurisdiction over salvage dues and other indemnities arising out of shipwreck, and over obligations and contracts existing between proprietors, masters, hands, pilots, and passengers. The Rhine Modus Vivendi adopts the Elbe formula for salvage dues, but not for labor controversies or controversies concerning passengers.

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It contains an adequate determination of what types of accident cases should be assimilated to collision.

In practice, the penal jurisdiction on the Rhine and Elbe is not often exercised, but it has, of course, an importance that cannot be measured in terms of the frequency of such cases. Administrative matters, such as payment of pilot and port dues, are always potentially important, but only rarely do they give rise to judicial cases. The chief practical importance of the jurisdiction granted these courts is jurisdiction in private law cases, especially in cases of collision. There is no doubt that easy and quick recourse to judicial investigation in such matters greatly facilitates navigation. The Danube Statute failed to give navigation tribunals this civil jurisdiction although it was contemplated at one time.

c. Procedure. The original provisions of the Act of Vienna called for uniform, internationally determined procedure of a summary nature throughout a river. Gradually, however, two things happened. National legislation encroached on this domain, and the need for a uniform system of procedure grew less as procedure in all countries became more simple and, therefore, less divergent. All that remains of the original concept is the rule that procedure will be as simple and as speedy as possible.

On the Rhine, the procedure of the Commission itself in judicial matters is determined by the Regulations for Procedure of 1838. In these, a special quorum of five was established for judicial matters, and this provision was never modified. Appeal procedure is laid down with precision in the Convention of Mannheim, and is further determined by numerous

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decisions. It has been determined, for example, that if two or more parties to a case are entitled to appeal, and if divergent appeals are made -- one party appealing to the Commission, and another to the national tribunal of appeal -- that appeal which is lodged first determines the jurisdiction.

No guarantee may be exacted from foreigners on account of their nationality as a condition precedent to access to the courts. Captains and Masters may not be prevented from continuing on their voyages as soon as they have deposited a guarantee fixed by the judges, normally equivalent to the estimated amount of damage. There are no stamp duties or costs other than charges resulting from the presence of witnesses or experts, or notification of all kinds.

d. Effect of Decisions. Decisions of the Rhine tribunals are executory in all the riparian States (including Belgium) according to the form prescribed by law in each of them. The Elbe Statute also provides that judgments are executory in all the riparian States. On the Danube, execution of decisions depends upon agreements existing between the States concerned.

A backward step was taken in the Rhine Modus Vivendi, when the principle of mutual recognition of decisions in matters of Rhine navigation was so whittled down that little was left of it. Among the instances in which the decision of another State can be reviewed is listed "the fact that the decision is contrary to public order." This was a consequence of the breakdown of international jurisdiction.

2. Investigation of Complaints Concerning Alleged Violations of Treaties, Agreements and Regulations by National and International Authorities. The Mannheim

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Convention gave the Central Commission of the Rhine specific power to examine all complaints arising out of the application of the Convention, as well as out of regulations passed by the riparian Governments and measures adopted by common accord.[1] The provision is also to be found in the Rhine Modus Vivendi and the Elbe Statute. Although it does not exist in the Danube Act, or in the earlier Statutes regulating the activities of either the European or the International Commissions, European tradition and actual practice have firmly established the principle, at least on the maritime Danube.

3. Participation in Settlement of Disputes among States in Conformity with Treaties and Agreements

a. Disputes Dealt with by the Commissions. In practice, the great majority of disputes concerning waterways among States are settled by the river commissions. Permanent machinery for the peaceful settlement of disputes has only recently evolved, and, in general, the means existing before the twentieth century -- direct negotiation, mediation, conciliation, or the organization of special arbitration tribunals -- were ill adapted to the specific matter of a river dispute. The practice of discussing such disputes in a commission arose early. With the exception of the Rhine Commission,[2] it was not, however, until after the World War that the commissions were expressly empowered to take action in the settlement of disputes.

Disputes between States come before the river commissions under their power to decide all questions

1. For example, a German may even bring forward a complaint against the German Government, and the Commission made decide upon that complaint.

2. Convention of Mannheim, Art. 45a. See in particular the German version.

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regarding the interpretation and application of a convention. An express provision to this effect was included in the Danube and Elbe Statutes. The Barcelona Statute, too, indirectly recognizes the possibility of referring disputes to the international commissions in Art. 22: "Disputes between the States as to interpretation or application of the Statute not settled directly between them may be brought to the Permanent Court of International Justice unless under special agreement ... steps are taken to settle it otherwise."

b. Reference of Disputes Beyond the River Commissions. The establishment of the League of Nations and of the Permanent Court of International Justice after the World War provided the machinery for referring disputes not settled by a river commission, or otherwise by direct negotiation, to a higher international authority. The Peace Treaties, and the Danube and Elbe Statutes enacted after the war provided, in substance, that these disputes would be settled in the manner determined by the League of Nations. The resolution of the Assembly, 9 December 1920, and the Barcelona Statute provided that such disputes would be referred to a body to be established by the League as the Advisory and Technical Organization in matters of communication and transit. If no settlement were made on the basis of an advisory opinion given by this body, the dispute should then be referred to the Permanent Court of International Justice. The jurisdiction of the Court is based on its Statutes or on the Barcelona provisions.

In the Danube and Elbe Statutes, and in the Danube statute, insofar as the International Danube

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Commission is concerned,[1] the right to make a decision of a commission the subject matter of a dispute is not limited to cases of alleged incompetence or violation of a treaty or agreement by the commission; but in such cases, any State (on the Elbe, each contracting State) may act as claimant. On any other grounds for dispute, only the State or States territorially interested can do so. This distinction was taken over from the Barcelona Statute, where it applies, however, only to decisions concerning public works by commissions on which nonriparian States are represented.

In accordance with these provisions, two cases were taken to the OCT: the first on the competence of the European Commission of the Danube between Galati and Braila; the second on the territorial jurisdiction of the International Commission of the Oder; the third on the representation of Germany on the International Danube Commission. In the first case, the Rumanian contention was that the powers of the European Commission above the lower limit of the port of Galati were related only to public works and services. In the Oder case, Poland contended that the jurisdiction of the Oder Commission did not extend beyond the Polish frontier. Both these cases[2] ultimately went to the Permanent Court of International Justice: the first on a request for an advisory opinion from the Councils of the League of Nations; the second on the basis of a compromise among the States represented on the International Oder Commission. The third of these

1. Extension of a system of judicial review to the European Danube Commission was part of the arrangement negotiated under the auspices of the OCT. See Section III G 2.

2. Which had been taken to the OCT for application or interpretation of the Treaty of Versailles.

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cases has already been discussed.[1]

In the Rhine Modus Vivendi, the submission of a dispute to the OCT becomes voluntary, at the discretion of the contending States. It is expressly stated that the Commission may only recommend a solution. If the interested States agree, or if one party is not a member of the League of Nations, the dispute may be submitted to an arbitral tribunal in accordance with the Hague Convention for the Pacific Settlement of International Disputes of 1907. In this Convention, supplemented by the Modus Vivendi, the procedure for presenting a dispute, as well as that for determining the composition of the arbitration tribunal, is precisely outlined.

All disputes arising under the Memel Statute between Lithuania and the Members of the Council of the League of Nations may be brought before the Permanent Court of International Justice. This applies, of course, to disputes arising out of decisions of the Harbor Board.

Disputes arising on matters under the jurisdiction of the Danzig Port and Waterways Board are referred to the High Commission of Danzig, when no agreement can be reached on the decision of the Board. Disputes may be brought to the High Commissioner by either Danzig or Poland, under Art. 38 of the Statute.

1. See Section IV B 3.

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IX. PROBLEMS FOR FUTURE CONSIDERATION

A. Introduction

The policies adopted on waterways of international concern at the present time will, of course, have some effect on future developments. Rules laid down now for the temporary organization of inland transportation will point to the broad outline of alterations which may be made in the international statutes. As a result, it is well to consider some of the problems that have developed under the application of these statutes in the past. The following are of outstanding importance.

B. Definition: Natural Waterways, Waterways of International Concern

Although there has been little change in the concept of international waterways, the practical significance of this concept has altered a great deal. In appraising the Vienna definition of interantional waterways[1] it should be borne in mind that in 1815, in western and central Europe, owing to the political fragmentation of Germany and Italy and the special provisions concerning Poland, there was not one waterway of more than local interest which remained national, with the possible exception of the upper Oder. If the Ottoman Empire had not been considered as outside the European community of nations, the same would have applied to eastern Europe. The distinction between natural and artificial waterways also had little effect at that time in excluding economically important waterways from internationalization, for there were as yet few canals, and one of the most important -- the link between the Oder and the Vistula -- fell under the provisions concerning Poland.[2]

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1. See Section V B 1.
2. See Section II D 3 b.

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Today, the position is very different. Changes in the political map of Europe during the nineteenth century have removed important waterways such as the Neckar, the Main,[1] the Weser, the Saale, and the Po from the category of international waterways or, at least, rendered their international character very doubtful. On the other hand, new waterways, such as the Midland Canal, the Rhine-Herne Canal, and the Adolf Hitler Canal, have been created -- as important and as much of international concern as those that were internationalized in 1815.

As long as works of improvement in the interest of navigation were limited in extent, the distinction between natural and artificial navigability, although superannuated in theory, did little harm in practice. Today, however, large sectors of major rivers -- for example, the Rhine between Kembs and Mannheim -- have been transformed by regularization. Dredging on a scale undreamed of a few decades ago can make a first class maritime waterway out of a minor outlet. These operations are technically and financially as great as the creation of artificial canals and channels. The distinction, therefore, is now quite arbitrary.

As long as a waterway was considered apart from the system to which it belongs, and as a common concern to its riparians only, it was not illogical to restrict internationalization to waterways that form or cross a boundary. When, however, the technical and economic unity of a waterway system is recognized, the definition is much less acceptable. When two or more systems are merged into one, it is obviously unsatisfactory. The adoption at Barcelona of the terminology "waterways of

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1. Subject to the provision concerning the Rhine-Danube Canal.

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international concern" is significant. Although the change was made at the time for diplomatic reasons, it points the way to a new concept of internationalization as applying to all waterways of primary concern to international traffic, including the links that connect, or will in the future connect, the main waterway systems of the European continent.

C. Need for Public Action to Maintain Navigation

The safe-guarding of navigation by means of works, signalling, pilotage, lock services, communications services, and complex port services, as well as by regulations and decisions in individual cases requires constant action by public authorities. Recurrent public action is needed to keep up with technical progress, and with the changes in traffic routes, trade organizations and practices, and other conditions.

There is need not only for isolated action by the riparians, but also for concerted action by the various States. In the first place, where a river forms a boundary, public action can accomplish little in the way of maintenance, improvement, regulations, enforcement, or supervision, unless there is close cooperation between the two riparians. Secondly, a waterway system forms a hydrotechnical indivisible whole. Dealing with it piecemeal is always undesirable, and may be disastrous. In the third place, there is an obvious advantage in having uniform legislation and administration in matters concerning navigation, wherever diverse conditions will permit. Uniformity should be realized over as great an area of intercommunicating waterways as possible.

An international regime must either wither or grow in scope and complexity as man-made works on the river

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become greater, and as State intervention in matters of public health, rationalization of production and distribution, and labor become more extensive. The idea that harmony among the interests of nations and those of their citizens will be increasingly evident as enlightened statesmanship prevails, and the belief that State intervention should be reduced to indispensable security measures in the general interest clearly belongs to the past. The same is true of the view that an international regime can be laid down in such detail that no gaps will be left, and so perfect that no changes will be needed. Experience on international waterways has proved that voluntary cooperation is not enough. No international regime can be entirely effective, even between only two States, without an adequate international organization. Organization is necessary to facilitate technical and, as much as possible, nonpolitical cooperation for the peaceful modification and development of the international regime, and for the settlement of disputes arising out of the divergent views that are recurrent and unavoidable among the riparian States. The need for binding decisions by majority vote becomes increasingly evident as technical progress enlarges the network of intercommunicating waterways, and enables vessels, passengers and goods to travel farther, thereby enlarging the number of States concerned.

D. Freedom of Communication[1]

Freedom of communication is the real aim of these international statutes. It implies the transportation of persons and goods, unhampered by political frontiers

1. As in Article 23e of the Covenant of the League of Nations, the word is used here as meaning intercourse, not merely exchange of messages.

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or nationalistic interests, along the technically and economically best adapted routes, by the most rational mode of communication, with adequate service at rates and under conditions determined with regard for the intests of all concerned.

Traditionally, it has been assumed that freedom of navigation -- i.e., primarily freedom in the movement and operation of vessels -- would ensure freedom of communication. This view is based first on the assumption that freedom of communication will be realized with regard to waterways by assuring freedom of navigation for all vessels and equality of treatment for all flags, provided that passengers and goods are granted freedom and equality of treatment in their relations with public authorities and in their use of the ports. Secondly, it is assumed that free competition among individual shipowners, or at least among different national fleets, with regard to the shaping of freight rates and the determination of other terms and conditions of transportation, will best achieve that consignors and consignees enjoy the benefits of the best service and of the most favorable terms and conditions, and that passengers and goods move along the road which is technically most suitable. In practice it has become clear that upholding freedom of navigation alone is not sufficient fully to maintain freedom of communication as far as waterways are concerned.

The powers traditionally granted to river commissions have largely been designed to uphold freedom of navigation. Modern technical and economic developments have shown a need for greater powers and closer integration. How far this is to be carried will depend

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to a large extent on present uncertainties: whether, in the period succeeding that of reconstruction, the trend will be toward State ownership of vessels or State control by means of share in the capital subsidies, or other devices, and toward international agreements among services, thus nationalized or nationally controlled.

In any case, freedom of navigation as an essential element of the international regime of waterways of international concern is not likely to be discarded. However, free navigation as it exists now still implies significant limitations for political and other reasons. Therefore, as past experience indicates, additional guarantees for freedom of communication on behalf of consignors and consignees, as well as on behalf of existing or potential routes, are needed. In approaching the problem of such supplementary guarantees, it is well to remember that it is not one of providing ready-made solutions for future difficulties, but of establishing instrumentalities to handle possible future needs. International organs may require powers of decision adequate for dealing with such problems as subsidies, cartels, barter, agreements, exchange controls, and other arrangements inherent in planned economy. If an international organ is to be useful, majority decisions will have to be binding on all States concerned. This, in turn, will require a fair appraisal of voting power, based on technical and economic factors.

E. Powers of River Commissions in Regard to Navigational and Nonnavigational Matters

A traditional European concept is that river commissions should deal only with matters concerning navigation. Under the past system of organization, the river commissions have found themselves unable, for various

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reasons, to deal with some of the new problems as they arose. Most outstanding are public works of European importance, such as those being carried out on the Rhine between Basel and Konstanz, the possible development of the Danube Basin, and the projected canals which will in time connect the waterway systems of all Europe. The Rhine-Main-Danube Canal, for example, is of primary European interest. Yet it is feared that financial obstacles may prevent its completion within a reasonable future, unless an international body with adequate power to raise funds has jurisdiction over it. International organization is also needed for construction, distribution of the financial burden, and for subsequent control of the future Elbe-Oder-Danube Canal.

A new idea is arising: that of entrusting to a single international authority all international interests in the conservation and improvement of a river system or systems, including those of which the effect on navigation is secondary; and, further, of making this authority responsible for an equitable distribution of the total financial burden.

F. Types of Organization for the Waterway Systems of Europe

Those who have practical experience in the field are of the opinion that the powers of the traditional type of organization are too limited in scope and in area to deal with technical works for navigation affecting the whole of the European waterway systems, and of large-scale nonnavigational matters affecting the waterways, primarily hydroelectric development. There are several possible forms of international organization for the conduct of river affairs which may grow, after the war, out of existing institutions. One of these is

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to maintain separate organizations for navigational and nonnavigational interests. If the separation is maintained, there are three possibilities as far as navigation is concerned: (a) a European inland waterway organization, (b) a separate navigation commission for each waterway system, and (c) the maintenance within one waterway system of more than one commission. The European inland waterway organization might be part of a European inland transport organization, should such a body be set up. All these possibilities are not mutually exclusive. For example, an organization of the TVA type on one waterway might, as far as its activities in navigation are concerned, be made part of a European inland waterway organization, the jurisdiction of which was limited to navigation. The disadvantages of more than one commission on one waterway system have been quite apparent on the Danube. A uniform regime for a waterway system is impossible under such conditions, and conflicts of jurisdiction are certain to appear.

The maintenance of separate river commissions for each waterway system has certain advantages, particularly if they are to be given direct responsibility, not only for the planning and financing of works of improvement on waterways, and, should the need arise, for the allocation of traffic and the control of subsidies, but also for the construction of such works, the operation of locks and other public services, the actual levying of navigation dues, and the carrying out of executive duties concerning traffic regulation. On the other hand, maintenance of separate Commissions will not adequately solve the problem of dealing properly with future connections between the waterway systems. The coordination of activities on the separate waterway systems would be extremely

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difficult. The problems of representation, and a satisfactory distribution of voting power are greater in such a type of organization than they would be in a more simplified one.

The establishment of a uniform organization depends on the general form of organization after the war. Should a European transport organization of some type be created, certainly inland waterways would be a part of its concern. Should a European organization for waterways only be created, separate river commissions would no doubt function under it. Unified control has certain advantages, particularly if the commissions continue mainly to exercise functions of a supervisory and even quasi-judicial nature. The problem of representation would be simplified, particularly for nonriparian States, and a balance would be secured in apportioning the benefits and burdens of internationalization. There would be two levels of authority: the upper authority -- the European transport or waterways organization -- would deal with general problems, such as those involving revision of the statute, major financial and technical decisions, questions of coordination or unification, serious disputes between states, and similar matters. The river commissions would continue to deal separately with the local and current affairs of each waterway system.

The general trend in transport regulation is towards coordination of the various modes of transportation. It can be expected that any future waterways organization will play an important role in this field.

G. International Security

Developments in transportation will be of vital importance to international security. It may be decided

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to utilize the experience and knowledge of the organization or organizations developed for waterways of international concern, and to make them responsible for watching river transport for purposes of general security. Such organizations may also be entrusted with the application of security measures, and with the initiation of preventive, emergency measures whenever and wherever required. In all these matters, they should act according to the directives and under the supervision of the general security organization.

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